

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 19-23649-rdd

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5 In the Matter of:

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7 PURDUE PHARMA L.P., ET AL.

8

9 Debtors.

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13 U.S. Bankruptcy Court
14 300 Quarropas Street
15 White Plains, New York 10601

16

17 October 10, 2019

18 10:06 AM

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22 B E F O R E :

23 HON. ROBERT D. DRAIN

24 U.S. BANKRUPTCY JUDGE

25 ECRO: NAROTAM RAI

1 HEARING Re Notice of Agenda for Second Day Hearing

2

3 HEARING Re Motion of Debtors for Entry of an Order

4 Authorizing (I) Debtors to (A) Pay Prepetition Wages,

5 Salaries, Employee Benefits and Other Compensation and (B)

6 Maintain Employee benefits Programs and Pay Related

7 Administrative Obligations, (II) Employees and Retirees to

8 Proceed with Outstanding Workers' Compensation Claims and

9 (III) Financial Institutions to Honor and Process Related

10 Checks and Transfers (ECF 6)

11

12 HEARING Re Object of UST (ECF 134)

13

14 HEARING Re Nevada Counties and Municipalities' Joinder to

15 the Objection of UST (ECF 190)

16

17 HEARING Re The Commonwealth of Pennsylvania's Joinder to the

18 Objection of the UST (ECF 190)

19

20 HEARING Re Joinder/Objection of the AdHoc Group of Non-

21 consent States (ECF 197)

22

23 HEARING Re Joinder of the State of Arizona to the Objection

24 of the UST (ECF 201)

25

1 HEARING Re Letter of Linda A. Lacewell, Superintendent of
2 New York State Department of Financial Service Re: Request
3 Payments to Purdue Pharma Employees (ECF 99)
4

5 HEARING Re Motion of Debtors for entry of Interim and Final
6 Orders Authorizing (I) Debtors to Pay Certain Prepetition
7 Taxes, Governmental Assessments and Fees and (II) Financial
8 Institutions to Honor and Process Related Checks and
9 Transfers (ECF 8)
10

11 HEARING Re Motion of Debtors for Entry of Interim and Final
12 Orders Authorizing (I) the Debtors to Continue and Renew
13 Their Liability, Property, Casualty and Other Insurance
14 Policies and Honor all Obligations in Respect Thereof and
15 (II) Financial Institutions to Honor and Process Related
16 checks and Transfers (ECF 10)
17

18 HEARING Re Motion of Debtors for Entry of Interim and Final
19 Orders Authorizing the Debtors to Continue and Renew Surety
20 Bond Program (ECF 12)
21

22 HEARING Re Motion of Debtors for Entry of Interim and Final
23 Orders (I) prohibiting Utilities From Altering, Refusing or
24 Discontinuing Service, (II) Deeming Utilities Adequately
25 Assured of Future Performance and (III) Establishing

1 Procedures for Determining Requests for Additional Adequate
2 Assurance (ECF 7)

3
4 HEARING Re Motion of Debtors for Entry of Interim and Final
5 Orders Authorizing (I) Debtors to Honor Prepetition
6 Obligations to Customers and Related Third Parties and to
7 Otherwise Continue Customer Programs (II) Relief from Stay
8 to Permit Setoff in Connection with the Customers and
9 Programs and (III) Financial Institutions to Honor and
10 Process Related Checks and Transfer (ECF 11)

11
12 HEARING Re Motion of Debtors for Entry of Interim and Final
13 Orders Authorizing (I) Payment of Certain Prepetition Claims
14 of Critical Vendors and (II) Financial Institutions to Honor
15 and Process Related Checks and Transfers (ECF 9)

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13 OTHERS

1 P R O C E E D I N G S

2 THE COURT: Okay. Good morning. In Re Purdue
3 Pharma L.P., et al.

4 MR. HUEBNER: Good morning, Your Honor, may I
5 proceed?

6 THE COURT: Sure.

7 MR. HUEBNER: May it please the Court, Your Honor,
8 I am Marshall Huebner of Davis Polk & Wardwell LLP on behalf
9 of the 24 Purdue debtors.

10 Your Honor, as we promised you at the first day
11 hearing we would and will work around the clock whenever
12 possible to settle and progress things with actual and
13 potential objectors and stakeholders in advance of these
14 Chapter 11 cases.

15 We will do so in service of our other pledge, to
16 do that work and service of Chapter 11's two core
17 objectives, maximization of value and appropriate
18 distribution of that value to stakeholders.

19 For what it's worth, the last four weeks have been
20 just about the most demanding and unceasing of my career,
21 even taken into account the financial crisis. Our calls and
22 interactions with various creditor constituencies day after
23 day often started at 7 a.m. and ended at or after 1 a.m.

24 With that said, I'm happy to report that these
25 efforts of many parties are bearing important fruit. Three

1 days ago after a week of around the clock work, we reached
2 agreement on a summary term sheet with an ad hoc group of
3 supporting creditors which includes the 23 states and
4 territories, including Puerto Rico, the MDL PEC and Coby
5 plaintiffs and the shareholders.

6 The term sheet was agreed to Monday night and
7 filed on the docket Tuesday, and puts substantially more
8 meat on the bones for all to see, in the general framework
9 that I was able to describe at the first day hearing.

10 We are not at this time moving for any formal
11 Court authority with respect to this term sheet, but it is
12 an important milestone that we have tried partied agreement
13 as to its form and content.

14 To be sure there is much more work to do on all
15 sides, including of course, with respect to the newly formed
16 UCC, before we would be ready to proceed through gate three
17 with an RSA.

18 The term sheet itself contains much more detail
19 about the essential elements of the framework that I
20 described to the Court on the first day. The entirety of
21 the debtors will be transferred to claimants without the
22 need for litigation, about either solvency or liability.

23 The ultimate goals remains the same, for the
24 exceedingly valuable medical, scientific and financial
25 assets of these 24 companies, billions of dollars' worth to

1 be turned exclusively towards the public good instead of
2 being relentlessly destroyed by litigation.

3 With respect to shareholders as the world can now
4 see, they are agreeing to exit their opioid businesses, not
5 only in the United States but worldwide. And to tender to
6 this bankruptcy estate nearly all and possibly even all of
7 the net proceeds from the sale of these worldwide family
8 owned pharmaceutical businesses known as IACs.

9 There's a minimum guaranteed shareholder
10 contribution of \$3 billion, even if these businesses sell
11 for nothing. After 3 billion in net proceeds has been
12 realized there's a 90/10 split in favor of the estate until
13 the estate has received another \$1.5 billion.

14 The 10 percent shareholder sliver interest of net
15 proceeds between 3 billion and 4.6 billion was supported by
16 the plaintiffs to incentivize the Sacklers to maximize the
17 estate's recovery. But to be clear it is not very much.

18 For example, if the net proceeds turned over are 3
19 billion, the shareholders get zero. If the estate gets 4
20 billion of net proceeds, the shareholders get 100 million or
21 2.4 percent of the total and the estate gets 97.6 percent of
22 the total. Then once the estate has gotten \$4.5 billion
23 there's a 50/50 split of all additional net proceeds in
24 whatever amount.

25 Thus while there's a committed minimum

1 contribution of \$3 billion, in addition, of course, to the
2 voluntary give up of the Purdue companies, which themselves
3 are worth billions of dollars, the ultimate incremental cash
4 payment to the estate could end up being 3, 4, 5 billion or
5 some other number depending on the overseas sales.

6 Indeed, the lead representative for a major state
7 that is currently opposing the deal represented that the
8 shareholders overseas businesses are worth \$9 billion.

9 Assuming the effective tax rate of 25 percent for
10 illustrative purposes, the estate would realize almost \$6
11 billion in incremental proceeds at those value levels. To
12 be clear, I am not sure that valuation is lively shared, but
13 it would be great if it were true.

14 The term sheets contains a great many other
15 things, I will mention a few of the most salient for the
16 benefit of the parties and the Court and on the phone.

17 As to the debtors, that obligates us to move
18 promptly for Court approval to pay the professional fees of
19 the ad hoc group, of course, on a proper motion on notice.

20 We think of this as similar to a restructuring
21 support agreement provision, but it is a fortiori as in this
22 unusual case, the vast majority of our litigation claimants,
23 about 85 or 86 percent of them, in fact, were deemed
24 ineligible by the United States Trustee to serve on the
25 official committee, as we discussed on the first day and we

1 decided not to pick a fight on that issue.

2 The term sheet also makes clear that the
3 reorganized entity will be designed in partnership with
4 (indiscernible) representatives, and the current shareholder
5 will have no role, no voice, no vote, no ownership, and no
6 involvement in the post emergent entities, none.

7 The directors and trustees, if that's the
8 structure we end up going with, will be selected exclusively
9 by creditor representatives. As discussed on the first day,
10 the goal is to maximize the value of these very material
11 companies and make sure that the area is exclusively for the
12 public good, in the hands chosen by creditors and approved
13 by this Court.

14 Moreover, Your Honor, although the gravamen of the
15 lawsuits is the past conduct that has long since ceased and
16 OxyContin remains an FDA approved product that continues to
17 be prescribed to hundreds of thousands of Americans and
18 reimbursed by at least 43 states and the federal government.
19 A small set of stakeholders seems to have expressed inherent
20 concerns about the product itself. There are elements in
21 the structure that are designed to address that as well.

22 So, Your Honor, while there are many conversations
23 ahead, of this I have no doubt, this is our current best
24 proposal for meeting several critical goals at the same
25 time, including of course maximizing the value of these

1 sizeable estates for the claimants and for the American
2 people.

3 I should also note since many people and many news
4 articles are asking and referring to the fact that this not
5 be like the tobacco settlement, where the money apparently
6 did not go to address the crisis at hand. That our goal, as
7 set forth in the term sheet expressly is that the
8 reorganized entity be required to deploy its assets to
9 address the opioid crisis.

10 And as even the cursory review of the document
11 makes clear, the shareholders will be providing substantial
12 diligence to the ad hoc committee, and presumably the
13 official committee as well.

14 Equally important, Your Honor, since the estate
15 and all parties need and deserve comfort that should the
16 deal not progress, the shareholders will not have used the
17 timing of the Chapter 11 process to be able to secrete
18 assets. The term sheet has an exhibit exclusively devoted
19 to asset protection provisions, that will be enshrined
20 assuming Your Honor agrees, in an order of this court. More
21 on that in a few minutes.

22 A second major thing we have been doing, virtually
23 every day since it was formed, is to begin our relationship
24 hopefully both professionally and productively with our nine
25 member official committee of unsecured creditors. I will,

1 of course, let Mr. Priz describe who the committee is, and
2 how they see their role in this case.

3 I will mention only one thing, the UCC's 2019
4 statement clearly and helpfully states that it views itself
5 as having fiduciary duties to all unsecured creditors in
6 these cases, despite the very unusual fact that almost 90
7 percent of our contingent creditors were deemed ineligible
8 to serve on the creditor's committee.

9 I will tread lightly here, but I think it bears
10 mention that this is a very unusual representation structure
11 and will create unusual dynamics. And there are incipient
12 result in intercreditor complexity and tensions that are
13 already manifesting.

14 That said, from our perspective in this unusual
15 case, with no secure debt, and where the plan structure
16 contemplates assets going exclusively to unsecured
17 creditors, there's an unusually substantial, although not
18 complete overlap between the fiduciary duties of the
19 debtors, the ultimate stewards of these estates, and the
20 duties of the UCC whose obligations run exclusively to
21 unsecured creditors.

22 As Your Honor knows, likely better than anyone
23 else in this room, there are a great many things that a
24 debtor and a UCC could already be tussling about in a case
25 of this complexity. To both parties credit, we are pursuing

1 a better way.

2 The debtors and the UCC and in a few relevant
3 respects, the shareholders, are very hard at work on a
4 stipulation that provides a constructive blueprint for at a
5 minimum the opening six months of this case. Multiple
6 drafts have gone back and forth at extreme speed.

7 While there is still wood to chop, I am hopeful
8 that we can reach agreement before tomorrow's hearing, and
9 I've invited the relevant lawyers to meet in person from the
10 very minute this hearing ends until the document hopefully
11 is done.

12 Because these are highly confidential settlement
13 negotiations with multiple parties, as much as I would like
14 to, it would be wholly improper for me, or I believe anyone
15 else, to give the Court an update on the contents of this
16 draft stipulation or the exact status of the negotiations.

17 So for today I will have to leave it at that,
18 except to note that there will clearly be an update tomorrow
19 and hopefully a good one.

20 There is one thing, though that I can and should
21 mention that is in the ad hoc committee term sheet that we
22 had discussed with others as well including of course
23 extensively with the UCC.

24 The debtors are cutting down the requested length
25 of the injunction from 270 days to 180 days, despite the

1 fact that there is a non-reducible governmental bar date
2 governing almost all creditors in this case about 86 percent
3 or so, there's 180 days from the petition date.

4 As I briefly mentioned before, there will be Court
5 ordered provisions designed to ensure that the estate is not
6 put at inappropriate risk of assets secretion or removal by
7 shareholders during the injunction period. That period
8 certainly should not and must not be used by any shareholder
9 party in an attempt to make itself more judgment proof by
10 taking actions to frustrate potential judgments.

11 As I made clear at the first day hearing, the
12 debtors and the special committee of the board are keenly
13 aware that under federal law they now own and are the
14 plaintiff for all potential fraudulent transfer, preference
15 and veil piercing actions against the shareholder parties.
16 And that under Section 550 that potential avoidance
17 liability attaches to many categories of transferees,
18 including initial transferee, the entity for whose benefit
19 any voidable transfers were made, or any intermediate or
20 immediate transferees of the initial transferees.

21 Your Honor, there's one last issue that I think I
22 need to address briefly before turning to the second day
23 agenda itself, that constitutes the primary reason we are
24 here.

25 I am, of course, not unaware that this case and

1 these debtors invoke very strong emotions and reactions, as
2 well as seemingly ceaseless media attention. As an officer
3 of this Court, just like the debtors themselves, very
4 serious duties under federal law it is critical to me and to
5 the debtors that the many parties in interest in this
6 situation have accurate facts and not misinformation in
7 front of them as they consider how to approach the complex
8 situation we all face.

9 So here are four things, Your Honor, that the
10 Court and stakeholders should know, that I probably should
11 have laid out in my first day remarks, but I erred heavily
12 on the side of brevity.

13 One, since at least March 2018 when Davis Polk &
14 Wardlow was retained, Purdue has made no distributions,
15 neither tax nor non-tax to its shareholders. The only tiny
16 sort of exception to this flat statement is that Rhodes paid
17 approximately \$140,000 directly to Maryland State taxing
18 authorities in 2017 and another 70,000 in 2018, almost all
19 of that before we became its counsel.

20 Two, in fact, the primary cash flows between
21 Purdue and its shareholders since January 1, 2017 have been
22 as follows. In 2017, Purdue's parent company borrowed
23 \$312.6 million from Purdue. During 2018 and '19, every
24 single penny, every penny of those loans was paid back with
25 interest.

1 Thus, in 2018 and 2019 there were only Purdue in
2 flows from and not out flows to the shareholders. In 2017,
3 there were approximately \$187 million in tax distributions
4 and no non-tax distributions, except for the \$199,000 that
5 was sent to Sliver Holding Company shareholders in
6 connection with a product transfer from Purdue to Rhodes.

7 Three, moreover, while there is still work to be
8 done, I believe it to be true that if one looks back a full
9 40 years from the petition date, the grand total of all tax
10 and non-tax distributions to the shareholders is less than
11 half of the minimum \$3 billion guaranteed contribution under
12 the settlement reached with the ad hoc group.

13 Four, finally Your Honor and others in the
14 courtroom may well have read recent media reports that one
15 of the Purdue depositions recently quote revealed, that over
16 the years more than 12 billion was distributed by Purdue to
17 its shareholders. Please allow me to remind the Court and
18 all parties here today at my first day presentation I
19 expressly referenced the financial transparency that we have
20 manifested, and more specifically that approximately one
21 year ago detailed presentations were given to a wide variety
22 of plaintiffs and governments about Purdue's financial
23 history.

24 The \$12 billion number breathlessly reported in
25 recent days in the press is in fact not new at all. In

1 fact, the previous diligence covered in detail Purdue's
2 transfers to its parent company during the 25 year period,
3 25 years from 1995 to the end of 2018.

4 As set forth herein, the non-tax distributions
5 during the 25 year period from 1995 to 2018 totaled just
6 under \$5.9 billion. The tax distributions over this 25 year
7 period total \$5.75 billion and non-cash distributions total
8 approximately \$410 million. This total is about \$12.05
9 billion since 1995 split about 52 percent non-tax and 48
10 percent tax.

11 In the last several months, these numbers have
12 been carefully examined in connection with something else
13 that I referenced at the first day hearing, which is the
14 multi-hundred page forensics report that is moving smartly
15 towards completion and will be shared with multiple parties
16 under appropriate confidentiality agreements.

17 One very last thing, Your Honor, before I turn
18 over the podium to Mr. Vonnegut, I've been seeing various
19 public statements from currently opposing government
20 officials about the conduct of these case that requires a
21 brief response, which I will make as briefly and as
22 controversially as I can.

23 There is much I would dearly like to address, but
24 today is not that day. In an editorial yesterday, one State
25 Attorney General stated as follows, "Last month Purdue filed

1 for bankruptcy, that's fine. Shutting down Purdue can help
2 to end a painful chapter." And also "Unfortunately Purdue's
3 actions suggest its less interested in closing the company
4 than in protecting the Sacklers' billions."

5 So please allow me to be very, very clear, so
6 there's no possibility of any mistake or any
7 misunderstanding. These Chapter 11 proceedings were not
8 connects to shut down Purdue or to close the company.

9 Upon filing, these 24 debtors worth billions of
10 dollars and with critical medical, manufacturing,
11 intellectual property and financial assets became Chapter 11
12 estates under the U.S. Bankruptcy Code and have a federal
13 law duty to maximize their value for all of their
14 stakeholders and to distribute that value as required by the
15 Bankruptcy Code. And that is what we are going to do.

16 To prepare, preserve create, as valuable a set of
17 assets and entities and proceeds and rescue drugs as we
18 possibly can to do the most to help claimants and America
19 itself with the opioid crisis.

20 Second, the notion that Purdue is "protecting the
21 Sackler billions" is as false as it is offensive. Unless of
22 course one finishes the sentence as one needs to, with the
23 critical missing clause. For the benefit of the estate and
24 its claimants where many of those billions are slated to be
25 transferred. That is the deal we have reached. To transfer

1 an absolute minimum of \$3 billion of additional Sackler cash
2 into the estates and hopefully much more, and to have the
3 shareholders voluntarily but irrevocably relinquish all
4 ownership, control, claims, and rights to the billions of
5 dollars of value at Purdue.

6 It is the estate that is the owner of veil
7 piercing and fraudulent transfer claims against the
8 shareholders. And we will not allow individual litigants to
9 helter skelter destroy that value, and to needlessly cause
10 hundreds of millions or billions of dollars of legal fees
11 and other costs and damage in the process that could instead
12 go to help ameliorate the opioid crisis.

13 I will understand and have sympathy for the fact
14 that every single one of the thousands of litigants would
15 like to have their own day in their own chosen court on
16 their own terms on their own schedule. But as I said at the
17 first day hearing that creates a true tragedy of the
18 comments since the impact of allowing that to proceed is
19 unthinkable value destruction for all.

20 And with that, Your Honor, I would like to turn to
21 the second day agenda which is actually largely uncontested
22 and that's --

23 MR. SCHWARTZBERG: Your Honor?

24 MR. HUEBNER: I'm sorry. Maybe other people want
25 to speak before we --

1 MR. SCHWARTZBERG: May I respond to Mr. Huebner's
2 statement?

3 THE COURT: Briefly, yes.

4 MR. SCHWARTZBERG: I'll be brief, Your Honor.

5 Your Honor, Paul Schwartzberg for the U.S.
6 Trustee's Office. I apologize for interrupting but prior to
7 getting into the meat of today's hearing I just wanted to --
8 I didn't want this to fall through the cracks.

9 Mr. Huebner said a lot in his opening statement,
10 including discussions regarding the cash distributions and
11 transfers made by the debtor. I am completely aware and I'm
12 sure the Court is aware of this, but those are just lawyer
13 statements, those are just Mr. Huebner's statements. I
14 don't know at this point if those statements have been
15 vetted by the ad hoc committee, the regular committee, the
16 official committee, so I just wanted that to go on the
17 record, Your Honor, that those are Mr. Huebner's statements,
18 the debtor's attorney's statements and not necessarily true
19 or -- they're not facts, Your Honor, there's no evidence,
20 there's no witness regarding that. I just wanted to state
21 that for the record, Your Honor.

22 MR. HUEBNER: That's actually very helpful, Your
23 Honor. Let me be very clear. Obviously I'm not the
24 financial forensics person. As I referenced I think both at
25 the last hearing and actually as I was making those remarks,

1 that analysis is being done by a very large financial
2 forensics team that is producing a massive report that will
3 have all those facts and a great many other facts that I
4 think are going to be of interest to the constituencies in
5 this case. And the Court can be very, very comfortable that
6 the ad hoc committee and the UCC and I'm sure a few others
7 as well will have full access to those reports when they're
8 done.

9 THE COURT: Okay.

10 MR. DIZENGOFF: Good morning, Your Honor, Ira
11 Dizengoff, Akin Gump Strauss Hauer and Feld, we are proposed
12 counsel for the official committee of unsecured creditors.
13 I rise for two reasons.

14 One to tell you it's very important we're here and
15 we have a job to do, so that's one. Two, to introduce you
16 to my partners, Ira Priz who is sitting right next to me
17 now, next to Marshall and Mitch Hurley. You'll hear from
18 them very often in the case. Mr. Priz has a comment, just
19 to give you our status on where we are and what we foresee
20 as a -- excuse me, what we foresee happening in the next
21 couple of days.

22 THE COURT: Okay.

23 MR. PRIZ: Good morning, Your Honor, Arik Priz
24 from Akin Gump as proposed counsel of the official committee
25 of unsecured creditors. Given that it's a first time

1 appearing in front of you, Your Honor, I have some prepared
2 remarks that I would like to make. Is that okay for me to
3 do so?

4 THE COURT: Okay. Can I just interrupt you for a
5 second?

6 MR. PRIZ: Yeah.

7 (Pause)

8 THE COURT: Go ahead.

9 MR. PRIZ: Let me start by saying it's an honor
10 and privilege to represent the official committee of
11 unsecured creditors in this case. This case and the opioid
12 crisis in general is a nationwide problem of epic
13 proportions that needs to be addressed, and in the
14 opportunity to play a role, indeed any role in combatting
15 the crisis and distributing much needed funds to state,
16 municipalities, hospitals, personal injury victims, NAS
17 children, health insurance carriers and others is of
18 monumental importance to the committee, it's advisors and
19 each of us personally.

20 With that, Your Honor, I'd like to address four
21 items, who we are. Second, how we are approaching this
22 case. Third, where we see this case going, and fourth, the
23 preliminary injunction motion that is up for hearing
24 tomorrow.

25 And on that, Your Honor, I'm obviously not

1 presenting argument, but I do want to address while we have
2 not yet filed an objection or a statement.

3 So first who we are. As you may heard, we
4 understand there were approximately 70 parties who sought to
5 sit on the official creditor's committee. Of those, the
6 Office of the United States Trustee chose just nine two
7 weeks ago, although frankly only six working days since
8 then.

9 Since that time, the committee has selected legal
10 counsel. They've selected efficiency legal counsel, which
11 is Bayard, they've selected a financial forensic advisor,
12 which is Province and an investment banker Jeffries.

13 Last weekend we filed a Rule 2019 statement that
14 listed the membership of the committee. As stated there,
15 the committee is made up of the following type of claimants,
16 two personal injury claimants Ryan Hampton and Cheryl Azura
17 (ph), two parents, or in one case a grandparent of the
18 children born with NAS, which is neonatal abstinence
19 syndrome, that's Cara Trainer (ph) and Walter Lee Sammons
20 (ph); one health insurance carrier, it's Blue Cross/Blue
21 Shield, one private hospital, West Boca, a pension benefit
22 guarantee corporation and two trade creditors, LTS Loan and
23 Therapy Systems and CBS Caremark.

24 The first six -- well, you've heard Mr. Huebner
25 describe something about our make-up. I think we need to

1 explain a little bit of this. The first six claimants are
2 examples of what we would refer to in this case as private
3 litigants. Private litigants include among others personal
4 injury plaintiffs, private hospitals, private health
5 insurance carriers, children born with NAS, both in the firm
6 of personal injury type claims and medical monitoring
7 claims, and a class of individuals who claim that their
8 health insurance premiums increased as a result of the
9 opioid crisis.

10 These private litigants are distinguishable from
11 what we refer to as the public litigants, the DOJ, states,
12 municipalities, cities and towns across the country, and the
13 Native American tribes.

14 Both public and private litigants have asserted or
15 will be asserting claims against Purdue. And in many
16 instances, such litigants have also asserted or will assert
17 claims against the Sacklers and other defendants.

18 The public and private litigants have, in many
19 instances, different damages theories, different causation
20 theories, different views about the strengths and weaknesses
21 of their claims and the strengths and weaknesses of the
22 claims of others.

23 These different views translate into different
24 views as to how any proceeds received from Purdue or the
25 Sacklers, or indeed any opioid manufacturer or distributor

1 or other defendants should be allocated. Indeed, these
2 intercreditor issues are one of the unspoken about issues
3 that are unfortunate byproduct of the opioid crisis that
4 could get in the way of efforts to compensate, abate, and
5 remediate.

6 We are very aware of these issues and we are going
7 to do everything we can to avoid them, becoming an
8 unnecessary and costly distraction in these cases.

9 To that end and to be clear as we stated in our
10 2019 statement, we have a fiduciary duty, not that we intend
11 to exercise our fiduciary, we do have a fiduciary duty and
12 will be representing the interests of all unsecured
13 creditors, whether they be public litigants, private
14 litigants, trade, or general unsecured creditors.

15 And in that role, we'll be trying to among other
16 things both increase the numerator, and we'll talk about
17 that in a second, and settle the denominator by determining
18 the appropriate allocation among creditors to avoid costly
19 and time consuming litigation.

20 To that end, although a lot has been said about
21 the U.S. Trustee's statutory decision not to place
22 governmental entities on the official committee, the members
23 of the committee are not themselves concerned with anything,
24 other than their fiduciary duties to all unsecured
25 creditors.

1 Three final words about the membership of the
2 official committee and then I'll move on to the second
3 point. First, a few of our committees have been contacted
4 directly by parties in this case, including by lawyers
5 representing parties in this case to discuss with them their
6 views and their roles as committee members.

7 We would kindly ask that all parties refrain from
8 doing so, but instead contact us as counsel of the committee
9 or those committee members individual counsel, names of
10 which we can provide if requested. As you can imagine, this
11 is the first time that certain committee members that have
12 been part of a committee and as such, they feel a little
13 harassed by these calls. If that continues, we're going to
14 ask this Court's assistance in enjoining these calls.

15 THE COURT: I think that's an important point to
16 reiterate. Serving on a committee like this is difficult
17 enough as it is, and there should be clear lines of
18 communication to facilitate that service. I expect in due
19 course the committee will propose procedures consistent with
20 the relevant Code section dealing with disclosure and the
21 like, which are particularly important in this type of case,
22 but to approach committee members willy nilly just is not
23 productive and not appropriate.

24 MR. PRIZ: Thank you, Your Honor, we appreciate
25 that. Second, certain committee members are active in the

1 victim rights advocacy arena. And part of their job in that
2 arena involves talking to the press, being active on social
3 media. As part of their services on the creditor's
4 committee they have been asked by us and have agreed to
5 refrain from talking to the press and being active on social
6 media regarding this case during the pendency of this case.

7 We felt, and they agreed, that this was the
8 appropriate course of action, and that as a committee, we
9 would speak with one voice in a courtroom and through our
10 pleadings.

11 The committee did not want its efforts in this
12 case to be undermined by a perception that members of the
13 committee are in some way trying to influence the Court
14 through the press, or make this case into a spectacle.

15 We point this out only as a point of reference,
16 because other parties in this case enjoy substantial press
17 coverage, and use the press as a tool in their strategic
18 arsenal, which they are of course permitted to do and should
19 do as they see fit. We're not saying that.

20 The members of the committee, however, who serve
21 all unsecured creditors and not any parochial interest will
22 not be doing so.

23 Finally, Your Honor, a note about some of the
24 individuals on the committee. I will be remiss if I do not
25 mention that the individuals on the committee sought to

1 serve on the committee because they want to be part of the
2 solution and feel deeply, strongly and personally about what
3 has happened.

4 It bears mentioning because they of all people
5 will be faced with difficult choices in the case, when
6 putting aside their very strong personal feelings to
7 exercise their fiduciary duties, which they've all committed
8 to do so. We are honored to be representing people of such
9 high integrity.

10 Second, how we are approaching this case. Your
11 Honor, the way we see it and very broadly there are three
12 main parts of this case. First, what we call the numerator,
13 second we call the denominator; i.e., allocation to
14 creditors, and third, what we call public health and safety,
15 ensuring that the first two parts are determined and decided
16 in a way that does not compromise but promotes public health
17 and safety given the opioid crisis.

18 With regard to the numerator as relates to at
19 least part of it, as you know, as Mr. Huebner just went
20 through the debtors and ad hoc group of supporting parties,
21 24 state -- 23 states now, and the plaintiff's executive
22 committee, the MDL, although not municipalities themselves
23 and the Sackler family have agreed to a term sheet which was
24 filed on the docket a few days ago outlining the settlement
25 framework.

1 We weren't provided with a draft of that term
2 sheet, we asked for it, and we saw it -- at first we saw it,
3 well, two hours before it was put on the docket, although
4 that was already the time of (indiscernible). The committee
5 currently takes no position on a settlement framework.
6 Because frankly we're just looking at it the same time
7 everyone else is, other than to note the following two
8 points.

9 First, we would hope that any party that wants it
10 to be approved and confirmed should spend time and effort
11 convincing us of that fact. And if a party wants to reject
12 it and wants to think -- say that it should not be approved,
13 they should time and effort convincing us of that case.
14 They should not be going out, they should be coming to us.

15 Second, all we can say about it substantively is
16 that it's a starting point. At this point we're not
17 prejudging anything and we need to do our work. A lot of
18 work actually. We'll have to investigate any and all claims
19 both against the Sacklers and others and understand the
20 potential value from the Purdue business and the IACs and
21 any insurance policies, and we hope and expect every party
22 in the case will cooperate with us.

23 With regards to the denominator, perhaps as
24 important as getting value for creditors is determining how
25 that value should be allocated and doing so quickly. AS pro

1 hocs obvious, but we're stating that it would be a
2 tremendous disappointment in this case if we were to achieve
3 a consensual settlement, one that maximizes value and then
4 spend years and years fighting over the allocation of it.

5 We raise this issue now because as noted earlier,
6 there are different types of creditors here, and different
7 types of litigants. We express in our 2019 statement that
8 certain litigants have gotten most of the press coverage,
9 and some parties in this case have expressed to us that such
10 litigants should get the lion share of any value that comes
11 out of this case. Indeed, you heard Mr. Huebner say that he
12 thinks 85 percent or 86 percent of the creditors in this
13 case are public entities. We don't know that.

14 We take no position on this issue at the time --
15 at this time. Given our role as fiduciaries of all
16 unsecured creditors, and at the same time that we're looking
17 to settlement framework of the numerator, we hope to engage
18 in a process of figuring out who gets what during the six
19 month period if there is a preliminary injunction, so as to
20 avoid a protracted and costly fight at some point in the
21 future.

22 And we hope to do it in the form of consensus
23 where all parties will have to give a little and recognize
24 that the parties' claims have value.

25 The third big issue I said was public health and

1 safety. It goes without saying that the reason we are all
2 here is not just trying to figure out the future of Purdue,
3 but to do so in a way that intends to combat the opioid
4 crisis, that many people believe that Purdue and the
5 Sacklers had a part, had a role. It is inevitable that we
6 are going to have to address these issues.

7 And so as we think about doing so on key decisions
8 like what to do with Purdue's business now, what to do with
9 Purdue's go forward business, what to do with the IACs,
10 whether an emergency victim fund should be set up, we have
11 to do so while considering public health and safety. There
12 may actually be no greater or grander important issue
13 considered in this case.

14 Third, where do we see this case going?
15 Preliminarily and noted above, sorry, noted earlier, we
16 talked about the settlement term sheet. The debtors for
17 their part have facilitated discussions between these
18 parties, but they have unequivocally stated that they're
19 still doing their work, and therefore as we understand it
20 could not possibly be bound to that term sheet. In fact, I
21 think everyone knows that the term sheet is unsigned.

22 And the committee for its part is going to do its
23 work as noted above and will be looking at everything. And
24 24 other states, as you know, vehemently object to the
25 settlement. So what actually do you have? You have two

1 open minded fiduciaries, half the states on one side, half
2 the states on the other. We for our part are going to do
3 everything we can to achieve the three goals I noted
4 earlier.

5 And we think it would behoove everybody in this
6 case to take a short period of time to allow the two estate
7 fiduciaries to come to a determination together, as to which
8 way they think this case should go with regard to the
9 settlement framework.

10 This would mean that the estate fiduciaries should
11 not be dealing with Chapter 11 plans, exclusivity
12 objections, standing motions, examiner motions for a short
13 period of time, because at bottom, the two estate
14 fiduciaries should be the only ones in this case without a
15 parochial interest in what happens to the Sacklers or to
16 which creditors get which proceeds, so long as it's done
17 fairly and equitably in a manner that enhances the public
18 health and safety.

19 Finally, Your Honor, the fourth point of our
20 agenda is what is the UCC's position on the preliminary
21 injunction motion and why we haven't done anything or filed
22 anything on the docket yet.

23 As you've no doubt noticed, we have not taken a
24 position yet and we still are not going to take a position
25 as of this morning. The committee has been in existence for

1 six working days. We've been dealing with a lot of things
2 all at once, including this. Consistent with what I
3 mentioned earlier, we've been working with the debtors and
4 the Sacklers on a case protocol on terms that would allow
5 some of the items that I mentioned earlier to occur.

6 It is our hope to be in a position as Mr. Huebner
7 said to file this before the hearing tomorrow, and include
8 at that time, the statements in support of the injunction.
9 We don't know if that'll happen, but that's our hope.

10 We've been focused on this because we believe we
11 are the best situated to investigate the cause of action
12 against the various parties including the Sacklers. And if
13 we do not believe the settlement is sufficient and we are
14 unable to procure more value, we believe we're the best
15 situated to bring those causes of action in a way that will
16 benefit all unsecured creditors.

17 Third, and perhaps most importantly, we are
18 working with the debtors as part of this protocol on
19 potentially jointly seeking this Court's approval to set up
20 an emergency relief fund to start combatting the crisis.

21 This is not designed to be a payment on claims.
22 It's designed for lack of a better word to be -- to do the
23 right thing and to start dealing with the opioid crisis now.
24 We believe there's precedent to do this from PG&E and we
25 expect every party in the case will work cooperatively and

1 collaboratively to get this in place early and not let their
2 parochial interest get in the way.

3 With that, Your Honor, we've no more remarks.

4 THE COURT: Okay.

5 MR. PRIZ: Thank you.

6 MR. HUEBNER: Just two very very tiny things for
7 me --

8 THE COURT: Okay.

9 MR. HUEBNER: -- because I'm like 99 percent or so
10 in agreement. One, when I said 85 to 86 percent, we're not
11 taking obviously any view on ultimately allowable claims.
12 I'm merely telling you in terms of the litigations filed,
13 85.8 I think percent of them were filed by governmental
14 litigants. Obviously we're a long way from knowing who has
15 what claim and I don't want anybody to draw an inference
16 from Mr. Priz's remarks that the debtors have remotely
17 concluded let alone done the work necessary to figure out
18 ultimately a claim allowance when we're three weeks into the
19 case.

20 Number two, just one tiny point, I hope Mr. Priz
21 will forgive me, when he sort of cast it as half the states
22 on one side, half the states on the other, I think it
23 probably is fair to mention that the supporters also include
24 the MDL PC and the co-lead plaintiffs which together I think
25 represent a massive percentage of the state entities --

1 under the states, municipalities, counties, et cetera, on
2 the -- not taking a view, I just don't want the record to be
3 sort of inaccurate. I have nothing else to say at this
4 point. I see Mr. Eckstein wants to rise, as I think the
5 third (indiscernible) will be out by the time we're done, I
6 shouldn't say the third wheel, I'll just sit down.

7 THE COURT: Okay.

8 MR. ECKSTEIN: Good morning, Your Honor, Kenneth
9 Eckstein of Kramer Levin representing to the ad hoc
10 committee of consenting states and municipalities.

11 I'm going to try to supplement the remarks made by
12 Mr. Huebner and Mr. Priz briefly, but I think given what has
13 been accomplished to date, it's useful to make a couple of
14 observations to supplement the first day hearing.

15 As we informed Your Honor at the outset of the
16 case, we entered this case representing a group of
17 governmental and other creditors that were supportive of a
18 settlement framework that had not yet been memorialized in
19 writing.

20 Mr. Huebner referenced over the past several weeks
21 there has been an extremely intense effort invested by a
22 variety of constituencies involved in this case to try to
23 achieve more substance to a settlement, and in fact, earlier
24 this week a settlement term sheet was agreed to that was
25 ultimately filed on the docket on Tuesday.

1 The settlement term sheet continues to have the
2 support of substantial governmental and other creditors,
3 including 28 states and territories or 23 states, five
4 territories, Indian tribes, one of which is a member of the
5 ad hoc committee, countless cities, counties and
6 municipalities, six of which are members of the ad hoc
7 committee as well as the plaintiff's executive committee
8 which consists of thousands of cities, counties and tribes,
9 as well as other litigants, including hospitals and third
10 party payors.

11 Collectively, Your Honor, the creditor
12 (indiscernible) in support of the settlement comprises over
13 half of the population of the country and holds and
14 represents the interests of the majority of claims against
15 the debtor's estates.

16 That said, Your Honor, we recognize that there are
17 -- there is still substantial constituencies in the case
18 that do not yet support the settlement, and there is
19 significant work that needs to be done in order to achieve a
20 sufficient broad consensus.

21 Your Honor, the settlement does have several key
22 elements to it that are important. First of all, the assets
23 will be transferred to a new post reorganization structure
24 controlled by claimants, as Mr. Huebner indicated will have
25 no involvement from the Sackler family.

1 The Sackler family will no longer be in the opioid
2 business. Billions of dollars will be dedicated to
3 treatment and remediation of the public health crisis caused
4 by the opioid epidemic and this remediation will occur in
5 the near future, not years from now after protracted and
6 costly litigation, one of the significant motivations of
7 entering into a settlement at the outset of the case.

8 As Your Honor has heard, the settlement
9 contemplates substantial ongoing diligence to be provided by
10 the debtors and the Sacklers. We need financial clarity as
11 to where the money has gone and the value of the Sacklers'
12 overseas operations, as well as sufficient information and
13 documents to allow all parties in this case to verify the
14 obligations in the agreement.

15 While negotiations over the settlement have been
16 lengthy and at times contentious, the parties have all
17 worked hard to get to this point. Reaching the settlement
18 of the term sheet is not a final step in this process, Your
19 Honor. While a large accomplishment it remains frankly only
20 an initial step.

21 I want to assure, Your Honor, all of the parties
22 that were involved in this term sheet recognize the
23 importance for a broad group of constituencies to
24 participate in what needs to be done in order to achieve a
25 plan. Therefore, this term sheet does not contemplate quick

1 break neck type of milestones that Your Honor may have seen
2 in other cases.

3 This contemplates a significant diligence process
4 that is going to be undertaken, not only by the ad hoc
5 committee, but undoubtedly by the official creditor's
6 committee. There is going to be a negotiation of a
7 restructuring support agreement over the next 120 days and
8 leading up to that we expect that there's going to be
9 significant diligence provided by the debtors and the
10 Sacklers.

11 The term sheet expressly provides that there will
12 not be a motion to approve the restructuring support
13 agreement prior to 180 days. That will allow even more time
14 to elapse and it contemplates that a plan will not be filed
15 until 270 days. This is an attempt to on the one hand move
16 this case forward expeditiously but not to in any way
17 interfere with the important rights that parties have to
18 test a lot of information that needs to be vetted in this
19 case.

20 The term sheet also specifically contemplates that
21 there are other parties in interest in this case that will
22 need to be consulted and actively involved in the process.
23 I'm hopeful, Your Honor, that the term sheet will not be a
24 source of division, but rather will provide a framework,
25 will provide a foundation for ultimately a successful plan

1 of reorganization and will provide adequate opportunity for
2 the official creditor's committee to do its important job,
3 and will provide an opportunity for the states and
4 municipalities who are not yet supportive of this plan to
5 gain the information they need in order to ultimately get
6 comfortable with the plan structure, and have the confidence
7 that this, in fact, does provide an appropriate vehicle to
8 resolve this case and address this problem in an effective
9 and significant manner, which is the intention of the
10 parties who are supporting this process and the members of
11 the ad hoc committee.

12 Your Honor, I want to assure the Court as Your
13 Honor had urged at the outset, we have begun interactions
14 with the other parties in this case while we have been
15 interacting with the debtors and the Sacklers on the term
16 sheet. We have begun our discussions with the creditor's
17 committee, we also have ongoing discussions with the non-
18 supporting states, and the hope is that with the term sheet
19 now in place, all the parties in this case including the ad
20 hoc committee can turn their attention to building the
21 appropriate consensus, and through an efficient process
22 learning the important information necessary to satisfy
23 ourselves with this plan, in fact, can lead to a confirmable
24 solution that will have the greatest support possible
25 through the constituencies in the case. Thank you, Your

1 Honor.

2 THE COURT: Okay. Thank you.

3 MR. TROOP: They keep pointing at me, Your Honor,
4 so Andrew Troop from Pillsbury Winthrop representing the ad
5 hoc group non-consenting states.

6 Just a few facts. I represent 53 percent of the
7 United States population on the ad hoc group, counting these
8 municipalities, included (indiscernible) subdivisions.
9 Second, I apologize to Mr. Priz because I kicked the podium
10 while he was speaking and he didn't skip a beat.

11 Third, Your Honor, I would be -- I have no
12 intention of arguing before you today (indiscernible) to
13 argue tomorrow. But I would ask you to think about reducing
14 the time that the debtor's committee and others in support
15 of the preliminary injunction can talk tomorrow by about the
16 hour that we spent talking today.

17 The -- I know that we'll all vehemently protest
18 that that's not what they're doing, we were just giving you
19 an update on where we are, but the very important issues of
20 how this Court should or should not exercise its power to
21 limit the ability of parties to litigate outside of this
22 forum against not only (indiscernible) for hearing tomorrow
23 and I'll reserve my comments on that until then. Thank you,
24 Your Honor.

25 THE COURT: Okay. I appreciate the remarks by the

1 four parties. They don't directly pertain to any of the
2 matters that are on today's calendar, and normally I
3 would've cut each of you short because of that, but this is
4 an unusual case and I applaud and encourage the parties, as
5 frankly I think they have in connection with this hearing,
6 to continue to work behind the scenes to minimize litigation
7 issues.

8 It's clear to me that work will be going on as
9 soon as this hearing ends pertaining to tomorrow's issue.
10 And that's a good thing. I also note that in an unusual
11 case like this, remarks from the bench can sometimes be
12 helpful to help guide that type of process, that consensual
13 process.

14 So not knowing where you are going with your as
15 Mr. Priz said, case protocol and Mr. Huebner said blueprint,
16 I wanted to give you a couple of my preliminary thoughts to
17 make sure that you at least consider them and focusing on
18 those issues, which I think also may be relevant to other
19 parties in interest in the case.

20 The Purdue companies in some way, in some major
21 way, are a focal point for a much larger issue, which is the
22 nationwide opioid crisis. The degree of their
23 responsibility for that crisis is disputed, although I think
24 at least to some extent acknowledged by the agreements that
25 Purdue has put forward.

1 But there are, to my mind, two courses for this
2 case. One is to deal specifically with Purdue's exposure
3 and the other is to deal more generally with the general
4 crisis. And those two courses can be harmonized, but it
5 will be a difficult task and I appreciate very much that as
6 Mr. Eckstein said, parties who are moving ahead in the
7 settlement process recognize that it's a difficult process,
8 that it won't take 30 days, it will not take 180 days to
9 resolve, but that it needs to be addressed.

10 As valuable as these debtors are, and as valuable
11 as the assets of related third parties, including various
12 Sackler family members and entities are, the size of the
13 opioid crisis generally in terms of damages, just monetary
14 damages is estimated to be far greater. Estimates range
15 from a hundred to \$500 billion per year, many orders of
16 magnitude greater than the valuations that people are
17 talking about here.

18 The money here therefore should be put to the best
19 use. And given that different types of claimants I think it
20 is obvious here that dealing with individual claims is not
21 necessarily the best use. Although one can't possibly
22 ignore the direct human impact.

23 So it seems to me that while the traditional
24 bankruptcy function of due diligence on assets, including
25 litigation claims that the debtors may have is a major focus

1 of this case and should be. That is a relatively easy
2 matter to grapple with. Bankruptcy courts deal with that
3 all the time, who should investigate, how should the
4 investigation be shared, and ultimately what decisions
5 should be made as far as litigation or settlement.

6 What is more difficult is coming to grips with how
7 the resources of these companies and any litigation targets
8 should be distributed. That distribution mechanism I think
9 the major cases, whether that's been a massive dislocation,
10 whether it's Agent Orange, 9-11, the BP settlement, it has
11 been proven that those payment mechanisms work best when
12 thoroughly vetted. You mustn't ignore that.

13 So I will leave the rest for tomorrow, but I do
14 hope that in coming up with your blueprint in addition to
15 the due diligence that you focus on assets, you focus on a
16 process for dealing with claims, but equally with the future
17 on how these assets are distributed.

18 I am pleased to see that the committee has
19 appointed several individuals to the -- I'm sorry, the U.S.
20 Trustee has appointed several individuals to the creditor's
21 committee. I understand that each state, whether through
22 its governor or attorney general, represents the people of
23 that state, as does the various municipalities, but no one
24 can ignore the individual people affected by this crisis.

25 So I hope that you all will be able to work

1 together to use the money as wisely as possible, and through
2 a plan which under the Bankruptcy Code and ultimately the
3 Constitution can, in fact, be binding forever, unlike
4 individual settlements in a non-bankruptcy context, where
5 funds dedicated to solving a public health crisis can and
6 have been invaded for other purposes.

7 So why don't we proceed then with today's agenda.

8 UNIDENTIFIED: Thank you, Your Honor, my
9 colleague, Mr. Robertson will be presenting the uncontested
10 matters first, if that's okay with Your Honor.

11 THE COURT: Well, actually can I say one more
12 thing? As part of the blue print you should definitely be
13 focusing on not only a claims process, but on how to
14 structure that in light of potential use of the settlement
15 funds.

16 There are enormous overlapping claim issues here,
17 and one could see various places where the money could go,
18 and there's certainly precedent for that going back to the
19 Agent Orange settlement. Unlike most bankruptcy cases where
20 you want to get the claims in and decide, I think a fair
21 amount of thought should be given here to allocation issues
22 first.

23 MR. DIZENGOFF: Your Honor, to give the Court
24 comfort if I may, the proposed blueprint actually contain
25 provisions on exactly those points. As I think I said at

1 some length on the first day, minimizing professional fees,
2 and time to distribution of monies, and frictional costs
3 which actually could be infinite is really, you know, maybe
4 even the single most pressing reason we're in Chapter 11 at
5 all. And I think the Court -- I hope will ultimately find
6 that we are actually taking those issues deadly seriously.

7 THE COURT: Okay. Very well.

8 MR. ROBERTSON: Thank you, Your Honor, and good
9 morning.

10 Your Honor, as Mr. Vonnegut noted, if it pleases
11 the Court we would like to turn to the second day relief and
12 first proceed with the uncontested items on for today
13 beginning at the item number two.

14 THE COURT: Okay.

15 MR. ROBERTSON: Thank you, Your Honor. Your
16 Honor, for the record, Christopher Robertson, Davis Polk &
17 Wardwell on behalf of the debtors.

18 Your Honor --

19 THE COURT: And I'm working off the amended
20 agenda, right?

21 MR. ROBERTSON: That's correct, Your Honor.

22 THE COURT: Very good.

23 MR. ROBERTSON: Your Honor, the first uncontested
24 matter going forward is the debtor's taxes motion. That
25 order -- the order approving the taxes motion on an interim

1 basis was entered on September 18th at Docket No. 65. The
2 debtors filed a proposed form of final order at Docket No.
3 252. I believe that Your Honor has binders with blacklines
4 of each of the proposed final orders that show changes from
5 the as entered confirmed orders. I have extra copies if
6 Your Honor would prefer.

7 THE COURT: No, I have them here. So you don't
8 have to hand it up.

9 MR. ROBERTSON: Thank you, Your Honor.

10 Your Honor, as is the case for each of the
11 uncontested matters the final forms -- the taxes -- the
12 final form of taxes order was negotiated with the official
13 creditor's committee, the ad hoc committee and the U.S.
14 Trustee. I would note up front that these key parties are
15 signed off on each final form of order relating to the
16 uncontested matters before Your Honor today.

17 As Mr. Huebner said at the outset, we work hard to
18 reach consensus, you know, before coming into court and we
19 would like to thank the U.S. Trustee, the UCC and the ad hoc
20 committee for, you know, working with us very long and
21 difficult hours to present a largely uncontested agenda
22 today.

23 The debtors did not receive any objections or
24 comments from any other parties in interest to the final
25 taxes relief. The changes to this order are conforming

1 changes to make the interim order a final order. Subject to
2 any questions that Your Honor may have, the debtors
3 respectfully request entry of the final order.

4 THE COURT: Okay. Does anyone have anything to
5 say on this motion, on a final basis?

6 All right. I had just one question. In this
7 revised order as in a couple of other ones, the following
8 paragraph was stricken, I'm not quite sure why. "Nothing in
9 the motion of this order shall be deemed to authorize the
10 debtors to accelerate any payments not otherwise due."

11 I think it was stricken because it then says prior
12 to entry of a final order.

13 MR. ROBERTSON: That's correct, Your Honor.

14 THE COURT: But I don't -- I think the thought in
15 the first clause is a good one, which is, "Nothing herein
16 requires anyone to accelerate anything." So I would leave
17 that in.

18 MR. ROBERTSON: That's --

19 THE COURT: I mean, it's consistent with the
20 motion and the fact that the whole thing came out.

21 MR. ROBERTSON: That is --

22 THE COURT: I don't want there to be any
23 implication --

24 MR. ROBERTSON: -- entirely okay, Your Honor. I
25 appreciate that.

1 THE COURT: Okay. All right. Well, with that one
2 change, I'll grant the motion based on the record of the
3 interim hearing and the lack of any objection to the entry
4 of this order after due notice.

5 MR. ROBERTSON: Thank you, Your Honor.

6 Your Honor, the next motion on the agenda is item
7 number 3, the debtor's insurance motion. The order
8 approving the insurance motion on an interim basis was
9 entered at Docket No. 66. The debtors filed a proposed form
10 of final order at Docket No. 253. The debtors received
11 informal comments from the U.S. Trustee, the UCC, and the ad
12 hoc committee, and also from two of their insurance
13 providers, which are reflected in the final form of order.

14 I believe that counsel of Old Republic Insurance
15 Company is present here and on the phone, Your Honor.

16 THE COURT: Okay. I guess that raises my only
17 question. You've added a paragraph regarding Old Republic,
18 or ORIC. Reading between the lines, but I just wanted to
19 have confirmation of this, in essence, you've negotiated an
20 extension and these are the terms, in essence?

21 MR. ROBERTSON: That's correct, Your Honor. If I
22 may, so referring to paragraph 5 in the final order --

23 THE COURT: Right.

24 MR. ROBERTSON: -- this paragraph 5 relates to
25 insurance policies with Old Republic Insurance Company. Old

1 Republic agreed to extend by one year its products liability
2 policy, and also agreed to provide primary layer general
3 liability coverage, effective October 1st.

4 THE COURT: And so part of that extension is to
5 spread the existing collateral to the new policy?

6 MR. ROBERTSON: That's correct, Your Honor. So
7 both of these policies are fronting policies. And
8 importantly, the Old Republic policies require the debtors
9 to provide and maintain collateral to secure any claims paid
10 with respect to the policies.

11 So the language in paragraph 5, it mitigates any
12 risk that Old Republic might advance amounts under these
13 fronting policies about a guarantee of full reimbursement
14 from the debtors. And just to say it, these protections
15 were required by Old Republic, you know, in the context of
16 the extension.

17 THE COURT: And you haven't reduced any -- I'm not
18 sure you could -- but you haven't reduced any obligations of
19 ORIC under the old policies?

20 MR. ROBERTSON: No, Your Honor. I don't speak for
21 them, but I don't think so, Your Honor.

22 THE COURT: Okay. Not that I think you could, but
23 I just wondered --

24 MR. LUSKIN: Your Honor, Michael Luskin, Luskin,
25 Stern & Eisler for ORIC. And on the phone is Margaret

1 Anderson of Fox, Swibel, Levin, and Carroll, which is the
2 primary outside counsel for ORIC, and her pro hac is
3 pending. I don't think the order has yet been signed, but
4 I'm sure there's a pile of them --

5 THE COURT: About 200, yeah.

6 MR. LUSKIN: -- back in chambers. Your Honor is
7 correct. What ORIC has done is actually at the debtor's
8 request issued a new policy, a replacement policy for
9 another insurer who I gather wouldn't extend on the primary
10 liability and then it extended the product liability claim,
11 the existing collateral is spread over both.

12 There are no known prepetition claims, but the
13 protection is there at the insistence of the insurer.

14 THE COURT: Okay. All right. Does anyone have
15 anything to say on this motion? All right, I will grant the
16 motion, again, based on the record of the interim hearing
17 and the fact that, except as addressed in the revised final
18 order, there were no objections, informal or formal.

19 Just on the pro hac point for a second, you're
20 right. We have gotten a lot of pro hac motions. I just
21 want to make sure everyone understands that unless you --
22 after the time for any objection to the motion has passed,
23 unless you e-mail the proposed order to chambers, it won't
24 get addressed.

25 So if you haven't done that, then the order won't

1 get entered, it will just sit on the docket because I won't
2 know about it.

3 MR. ROBERTSON: Thank you, Your Honor. Once
4 again, this is Christopher Robertson, Davis Polk & Wardwell
5 on behalf of the debtors.

6 Your Honor, the next motion on the agenda is item
7 number 4, the debtor's surety motion. The order approving
8 the surety's motion on an interim basis was entered at
9 Docket No. 68. The debtor has filed a proposed form of
10 order at Docket No. 254.

11 Your Honor, Westchester Fire Insurance Company
12 provided informal comments to the proposed final order. In
13 order to resolve any potential objection, we agreed to read
14 our reservation of rights into the record. If Your Honor
15 would indulge me?

16 THE COURT: Okay.

17 MR. ROBERTSON: Thank you. Thank you, Your Honor.
18 Nothing in the final -- nothing in the interim or final
19 orders shall increase the surety's obligations, if any, to
20 issue new bonds or increase the amount of, or renew any
21 current bonds.

22 THE COURT: Nothing in this order will?

23 MR. ROBERTSON: Nothing in this order.

24 THE COURT: Okay.

25 MR. ROBERTSON: The remaining changes to the form

1 of final order relates to consultation rights agreed with
2 the creditor's committee, and the ad hoc committee, and
3 conforming final order changes. And unless Your Honor has
4 any questions regarding the relief requested in the surety's
5 motion, the debtors respectfully request that a relief be
6 granted on a final basis.

7 THE COURT: My only point on this one is the same
8 one I've made on the tax motion. At the top of page 3,
9 bottom of paragraph 4, there was a proviso. The whole
10 proviso was stricken, I think, because there's a reference
11 to granting the motion on a final basis. But you should put
12 in again, "Provided that the debtors will not pay any
13 prepetition amounts arising under the surety bond program
14 before the applicable due date."

15 MR. ROBERTSON: Thank you, Your Honor. And the
16 forms of order that we submit to chambers after this hearing
17 will reflect that change.

18 THE COURT: Okay. So again, given that there's no
19 opposition to this motion and the entry of the order as
20 revised, and based on the record of the interim hearing,
21 I'll grant the motion on a final basis.

22 MR. ROBERTSON: Thank you, Your Honor. Your
23 Honor, I now turn to item number 5 on the agenda, the
24 debtor's utilities motion. That -- the order approving the
25 utilities motion on an interim basis was entered at Docket

1 No. 64. The debtors filed a proposed form of final order at
2 Docket No. 250.

3 Your Honor, no responses were received to this
4 motion other than from the creditor's committee, the ad hoc
5 committee, and the U.S. Trustee. One point of clarification
6 with respect to paragraph 3, the debtors have deposited the
7 full amount of the adequate assurance deposit.

8 THE COURT: Okay. As per the interim order.

9 MR. ROBERTSON: Correct, Your Honor.

10 THE COURT: Right.

11 MR. ROBERTSON: I will pause, Your Honor, in case
12 you have any questions regarding the requested relief.
13 Otherwise, the debtors respectfully request that the relief
14 be granted on a final basis.

15 THE COURT: Okay. Does anyone have anything to
16 say on the utilities adequate assurance order? All right.
17 I will grant the motion, which is unopposed, and based on
18 the record of the interim hearing, this relief is consistent
19 with Section 366 and the applicable case law in this
20 district.

21 The point you just made, though, maybe is -- let
22 me just look at paragraph 3, "To the extent not already
23 deposited." All right. That's fine. There's no confusion
24 there. That's fine. So you can e-mail that order to
25 chambers.

1 MR. ROBERTSON: Thank you, Your Honor. Your
2 Honor, the debtor's customer programs motion is the next on
3 the agenda at item number 6.

4 THE COURT: Okay.

5 MR. ROBERTSON: The order approving the customer
6 programs motion on an interim basis was entered at Docket
7 No. 67. The debtors filed a proposed form of final order at
8 Docket No. 251.

9 Apart from informal comments from the U.S.
10 Trustee, the UCC, and the ad hoc committee, the debtors did
11 not receive any formal or informal comments to customer
12 programs after entry of the interim order. The changes to
13 the form of final order reflect the addition of agreed
14 reporting and consultation rights to the creditors committee
15 and the ad hoc committee, other provisions -- agreed with
16 the committees and other conforming interim order to final
17 order changes.

18 Subject to any questions that Your Honor may have,
19 the debtors respectfully request entry of the final order.

20 THE COURT: Okay. Does anyone have anything to
21 say on this motion? All right. I'll grant the motion on a
22 final basis, again, based on the fact that it's unopposed
23 and the record of the interim hearing.

24 As you noted, this order has consultation
25 obligations in it. As I noted before, there's at least one

1 other large active group. There may be more than one.
2 While it doesn't have formal consultation rights under these
3 orders, consistent with what the debtors have said all
4 along, I'm sure they will be sharing information as far as
5 appropriate requests are concerned on a regular basis with
6 those parties too.

7 MR. ROBERTSON: Certainly, Your Honor.

8 Your Honor, the final uncontested matter is the
9 debtor's critical vendor motion, which is at agenda number
10 7. The order approving the critical vendors motion on an
11 interim basis was entered at Docket No. 63. The debtors
12 filed a proposed form of final order at Docket No. 255.

13 THE COURT: Okay.

14 MR. ROBERTSON: Apart from informal comments from
15 the U.S. Trustee, the UCC, and the ad hoc committee, the
16 debtors received an informal response from one vendor, LTS,
17 Loan Therapy Systems Corp. Your Honor, the debtors agreed
18 to add paragraph 14 of the proposed final order at the
19 request of LTS Lohmann. This paragraph provides that goods
20 shipped under prepetition purchase orders that are delivered
21 to and accepted by the debtors after the petition date are
22 granted administrative expense status.

23 The paragraph does not address payment of any
24 outstanding claims that LTS may have on account of goods
25 delivered prepetition. Again, the remaining changes to the

1 form of final order reflect the addition of agreed reporting
2 and consultation rights for the creditors committee and the
3 ad hoc committee, and other conforming changes.

4 Subject to any questions that Your Honor may have,
5 the debtors respectfully request entry of the final order.

6 THE COURT: All right. I obviously saw the
7 addition of paragraph 14, which dealt with LTS Lohmann.
8 This may be a much smaller -- I'm sure it will be a much
9 smaller issue in this case than it has become in the Sears
10 case, but a lot of potentially ambiguous meaning can be
11 found by at least some parties in the phrase "delivered to
12 and accepted by the debtors on the petition date," i.e.
13 whether it's delivered to an intermediary, et cetera. I'm
14 not sure whether the parties understand what they've agreed
15 to here or if they're just willing to live with this
16 language and deal with it later. But I just wanted to note
17 that for the record.

18 MR. ROBERTSON: Thank you, Your Honor.

19 THE COURT: Okay. Is it --

20 MR. HUEBNER: Let me help with that for a second.

21 THE COURT: Okay.

22 MR. HUEBNER: I think given the context of this
23 case and the extremely small --

24 THE COURT: Yeah. It's not -- it doesn't have the
25 same meaning, but I -- if these two parties had an

1 understanding as to what that means, fine. It may not mean
2 the same thing in -- and this isn't a precedent for any
3 other vendor.

4 MR. HUEBNER: Yeah. And as a reminder, Your
5 Honor, of course, we have no secured debt and no DIP loans.
6 There aren't really competing creditors per se on this.
7 It's just a pre versus post issue. But we're pretty sure we
8 know what it means.

9 THE COURT: Okay. Very well. Does anyone have
10 anything to say on this motion? All right. I'll grant the
11 relief on a final basis, again, based on the record of the
12 interim hearing and the fact that the motion, except as the
13 parties have modified the order, received no informal or
14 formal objections.

15 MR. ROBERTSON: Thank you, Your Honor. And now
16 I'd like to turn the podium over to my colleague, Eli
17 Vonnegut, to address the wages motion, which is item number
18 1 on the agenda.

19 THE COURT: Okay.

20 MR. VONNEGUT: Good morning, Your Honor. For the
21 record, Eli Vonnegut of Davis Polk & Wardwell on behalf of
22 the debtors.

23 The next item on the agenda is agenda item number
24 1, Docket No. 6, the employee wages motion. The interim
25 order on this motion is on the docket at item number 62, and

1 our proposed form of final order was filed at Docket 256.

2 Your Honor, since our first day hearing, we have
3 been hard at work with the unsecured creditors committee,
4 the ad hoc committee, and the U.S. Trustee, working to help
5 everyone understand at warp speed produce complex business,
6 and working to get everyone comfortable with all of the
7 relief that we've sought from the Court.

8 I want to personally applaud and thank all of the
9 advisors for these two groups for their very, very
10 constructive and tireless efforts. They jumped in with both
11 feet in a very difficult situation and got to work with
12 truly remarkable speed and skill.

13 As we hope will become a theme in these cases, the
14 principal shared goal of all of this hard work was reaching
15 agreement as much as we possibly can and avoiding wasting
16 estate resources and burdening the Court with unnecessary
17 disputes.

18 With respect to the wages motion and the unsecured
19 creditors committee and the ad hoc committee, we've reached
20 agreements for today on the following approach. First are
21 basic programs, including wages, benefits, expense
22 reimbursement, vacation and sick leave, worker's
23 compensation, savings plans, contingent workers. All of
24 those programs are wholly uncontested. So we would ask the
25 Court to authorize those programs on a final basis to give

1 our workforce comfort that they are squared away.

2 There's a second category of programs. This
3 hearing was scheduled, as Your Honor well knows, unusually
4 early in this case. And the early days of this case have
5 been extraordinarily busy. There's been a lot to do. In
6 light of that, our constituents asked for some more time to
7 complete their diligence on some of the more complex
8 compensation programs that we have.

9 We want everybody to be comfortable. We don't
10 want to rush anybody needlessly, so we agreed to defer those
11 programs to a hearing to be held on November 6th at 10:00
12 a.m. For those programs, the annual incentive plan and the
13 long term results plan will be deferred. The sign on
14 bonuses above the small cap that Your Honor authorized in
15 the interim order will also be deferred. So nothing will
16 happen with respect to those programs.

17 The non-executive retention plan and advancement
18 of expenses, those were already authorized on an interim
19 basis. They will continue to be authorized on an interim
20 basis, but final approval will be deferred to November 6th.
21 So for all of those programs, we are leaving in place the
22 status quo under the interim order.

23 With those deferrals, the relief that we're asking
24 for today that goes beyond what was approved in the interim
25 order already is very, very narrow. It's two programs that

1 we agreed to defer at the first day hearing, for which we
2 now need approval, because they are relevant to business
3 initiatives that the company is undertaking right now,
4 effectively.

5 The first one is the Treyburn (ph) retention plan.
6 That is modest in amount. It's limited to non-insider
7 employees. And I'll go through this in more detail in a
8 moment. It applies to employees that are critical to the
9 successful consolidation of produced manufacturing
10 operations. That work is being completed now and the
11 payments will fall due soon, so we didn't think that those
12 people should have to wait for comfort that they will be
13 paid.

14 The second program is the market access ICP, which
15 is another small program that only applies to non-insider
16 employees. And that is scheduled to pay out very soon. And
17 again, we wanted to give those people comfort that they're
18 going to get paid so they're not left waiting.

19 One point of clarification, this is not new
20 relief, but there's been some confusion on it, so I want to
21 make sure that everybody's clear. Payment of severance to
22 current employees, current employees now that are terminated
23 post-petition was authorized on an interim basis and we are
24 seeking final approval today. The only employees that we're
25 aware of for whom this would be relevant are the Treyburn

1 employees, because they're the only people that we know will
2 be let go.

3 The U.S. Trustee, it's not clear to me whether
4 they object to this. I think they may have some questions.
5 So we'll leave that to later in the agenda.

6 We did get some requests from various constituents
7 for additional information on the programs that we're moving
8 forward with today. Those requests we have addressed in the
9 supplemental declaration and Mr. Jon Lowne, who's our chief
10 financial officer. That is on file at Docket No. 236. Mr.
11 Lowne is present in the courtroom today, if anybody has
12 questions. If not, I would ask that that declaration be
13 admitted into evidence at this time.

14 THE COURT: Okay. Does anyone want to cross-
15 examine Mr. Lowne on his supplemental declaration?

16 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
17 for the U.S. Trustee's Office. I do have a few questions
18 for Mr. Lowne.

19 THE COURT: Okay. If you could come up to the
20 stand then, sir. Would you raise your right hand, please?

21 JON LOWNE, WITNESS, SWORN

22 THE COURT: And could you just spell your name for
23 the record, please?

24 THE WITNESS: Yes. It's J-O-N, L-O-W-N-E.

25 THE COURT: Okay.

1 CROSS-EXAMINATION

2 BY MR. SCHWARTZBERG:

3 Q Good morning, Mr. Lowne. My name is Paul Schwartzberg.
4 I'm an attorney with the U.S. Trustee's Office. And I was
5 going to ask you a few questions on your supplemental
6 declaration. Would you need a copy of that? Because I will
7 refer to it.

8 A It might be helpful, yes. Thank you.

9 Q Counsel is quicker than I am. Thank you. First, I'd
10 like to refer to paragraph 13 of that declaration. The
11 second to the last question -- or last sentence, I
12 apologize. It says, "None of the eligible -- none of the
13 employees eligible for payment under the market access ICP
14 are engaged or compensated on the basis of promotion of any
15 opioid products to prescribers."

16 MR. VONNEGUT: Excuse me, Your Honor. We do have
17 supplementary proffer testimony on this subject. I don't
18 know if it's better to wait until --

19 THE COURT: Well, no, let Mr. Schwartzberg ask the
20 question.

21 MR. SCHWARTZBERG: I apologize. I didn't --

22 BY MR. SCHWARTZBERG:

23 Q My first general question is what does the promotion of
24 opioid products to -- well, what is the definition of a
25 prescriber?

1 A A prescriber is someone that writes a prescription for
2 an opioid product.

3 Q So the employees who are eligible to the market access
4 ICP program, the bonus program that the debtors are seeking
5 approval of today, they are being compensated for the
6 promotion of opioids to people who -- or entities who are
7 not prescribers?

8 A So they work with our distributors and our managed care
9 organizations, and their compensation is based upon the
10 parts of their compensation program, which is for Q3 and Q4,
11 50 percent their individual objectives, 25 percent Adhansia,
12 which is a non-opioid product, and 25 percent based upon the
13 corporate objectives.

14 Q So to the extent the debtors are reaping benefits from
15 the sale of opioids for either the 50 percent metric or the
16 25 percent metrics, these people would be rewarded or
17 provided bonuses?

18 A Well, their individuals objectives are tied to the
19 specifics of working with wholesalers and the specifics of
20 working with managed care organizations, which is primarily
21 working on (indiscernible) access --

22 Q I'm sorry. I didn't hear what you said.

23 A So working with managed care organizations, which is
24 getting all of our products (indiscernible) access to
25 provide products, make products available to the appropriate

1 patients.

2 Q And those products include opioids?

3 A Those products do include opioids.

4 Q Okay. You're aware of the six people who are under
5 this plan, is that correct?

6 A That's correct.

7 Q Okay. Do you know if their compensation is below
8 market value for the average pharmaceutical industry for
9 their particular positions?

10 A I can talk generally on that.

11 Q I'm talking about these six people.

12 A So for the six people, like other people in our
13 organization, compensation is compared to benchmarks for
14 similar positions that our human resource compensation
15 experts look at as part of compensation review of our
16 employees.

17 Q So are they below market average?

18 A I don't know for these six individuals whether they're
19 below, but we certainly benchmark our employees.

20 Q So it's possible they're being currently paid above
21 market average?

22 A It's possible they could be above or below, I just
23 don't know the answer to that question.

24 Q All right. Thank you. I'm going to reference
25 paragraph 10 of your declaration. Let me get to it too.

1 Roughly four lines down, a sentence starts, "As described in
2 more detail in the -- your declaration, under the severance
3 plan, vice presidents and above, with less than five years
4 of employment with the debtors received six months of
5 severance pay." And then, "And vice presidents and above
6 with greater than five years receive one year of severance
7 pay."

8 What I'm focusing on on that sentence is the "and
9 above" portion. Do you see that?

10 A I do.

11 Q Okay. How many employees do the debtors have that are
12 above vice president?

13 A I don't know the exact number of people above vice
14 president.

15 Q Do the people above vice president include more than
16 the ten people referenced in -- I'm sorry, in Footnote 4 of
17 your declaration? Those ten people, if you want to look,
18 are the people that are, for lack of a better term, admitted
19 insiders? The ten people referenced in your -- I think to
20 an exhibit to your initial declaration. Are there more than
21 those ten people?

22 A Yes, there are.

23 Q And what are the levels? How many senior vice
24 presidents are there?

25 A I don't know of the ten how many are senior vice

1 presidents.

2 Q No, I apologize. Forgetting about Footnote 4.

3 A Okay.

4 Q You had indicated there are people above the vice
5 president level that are not included in Footnote 4. How
6 many of those people are senior vice presidents?

7 A How many people --

8 Q But do you know how many senior vice presidents the
9 company has, other than referenced in Footnote 4?

10 A There are no other senior vice presidents, other than
11 those referenced in Footnote 4.

12 Q Okay. What are the levels -- the general description,
13 their levels of the people who are above vice president that
14 are not listed in Footnote 4?

15 A So --

16 Q Broad brush.

17 A Yeah. So it's vice presidents. There's no title that
18 I'm aware of between vice president and senior vice
19 president. So it would be a vice president title as
20 pertains to the paragraph 10 that you've asked me to look
21 at. So for example, some titles that I can think of are our
22 head of the -- our commercial organization, which is now a
23 very small part of our business, is a vice president. I
24 don't recall his exact title.

25 Q Well, I -- maybe we're talking at cross-purposes here.

1 I was asking how many people are above the vice president.

2 I'm focusing on the "and above" in those two phrases. And I
3 wanted to know how many people are above the vice president
4 level that are not included in Footnote 4. And you had
5 indicated, if I recall, that you did not know.

6 A No, no, so I misunderstood your question.

7 Q Okay.

8 A I thought I replied that there are no senior vice
9 president and above, with the exception of those people that
10 are listed in paragraph --

11 Q Okay. Then maybe I misunderstood you, so --

12 A Yeah, no, no.

13 Q So other than the ten people in paragraph 4, there's
14 nobody above vice president?

15 A That is correct.

16 Q Okay. All right. That's --

17 A Sorry.

18 Q And then the next question is how many vice presidents
19 are there?

20 A I don't know the exact number.

21 Q Okay. Could it be more than ten?

22 A If it's above ten, it would be marginally above ten. I
23 can't think that there's much more than ten. It might be
24 slightly less.

25 Q So I want to focus on the people in Footnote 4.

1 A Okay.

2 Q Do any of them -- do any of their job descriptions or
3 functions entail the sale of opioids or connected to the
4 sale of opioids?

5 THE COURT: This company sells opioids.

6 THE WITNESS: So -- so --

7 THE COURT: No, the answer is they all do.

8 BY MR. SCHWARTZBERG:

9 Q All right, thank you. That's the answer?

10 A (No audible response).

11 Q Yes, okay.

12 A I would expand on the answer to say that we don't have
13 a sales force that calls on prescribers of opioids. We
14 don't do any promotion of opioids, but obviously much of our
15 sales revenue is from opioids. So we touch opioids from
16 that perspective.

17 Q Are any of the ten people that are referenced in
18 Footnote 4, do they have -- let me back up. Are you aware
19 of the informational brief the debtors filed on the first
20 day?

21 A I've read a lot of the briefs. I'm sure I've seen it.

22 Q In that brief, the debtor acknowledged misconduct, or
23 the debtor discusses the acknowledged misconduct in the
24 marketing of OxyContin from 1996 to 2001; are you aware of
25 that?

1 A I am aware of that, yes.

2 Q And in that information brief, it references that
3 Purdue, Frederick Company, and the guilty plea for
4 misbranding OxyContin; are you aware of that?

5 A Yes, I am.

6 Q Okay. Are any of the ten people referenced in Footnote
7 4, are they connected or do they have anything to do with
8 the first thing I discussed, the misconduct between 1996 and
9 2001 in the marketing of OxyContin?

10 MR. VONNEGUT: Judge, the phrase "connected to," I
11 think is a problematically vague phrasing for this question.

12 BY MR. SCHWARTZBERG:

13 Q Were any of the ten people employed with the debtor
14 between 1996 and in 2001?

15 A Certainly, I was employed during that period of time.
16 I'm not sure about all of the others of the ten list.

17 Q So are you aware of any of the ten people participated
18 in the misconduct that the debtors acknowledged in the
19 informational brief?

20 A I'm not aware, but I'm -- I don't think any of them
21 were part of the guilty plea, or any of them were convicted
22 of any wrongdoing. I know that for a fact.

23 Q You know that for a fact. Well, we know that they're
24 not convicted of any wrongdoing, but do you know for a fact
25 that they weren't participating in any of the misconduct

1 that the debtors acknowledge?

2 A I'm not aware.

3 Q Do you know or are you aware if they were involved with
4 the actions that resulted in the guilty plea in 2007?

5 MR. VONNEGUT: Excuse me, Judge. We'll proceed
6 however you like, but we do have some very crisp testimony
7 addressing these very issues prepared. If it would be
8 helpful, we can do that, and maybe then Mr. Schwartzberg can
9 proceed with any unanswered questions.

10 MR. SCHWARTZBERG: Your Honor, they filed the
11 motion and then they filed the supplement, I'm cross-
12 examining the witness. If they had other --

13 THE COURT: You could ask him on redirect.

14 MR. VONNEGUT: Okay, fair.

15 MR. SCHWARTZBERG: Thank you, Your Honor.

16 BY MR. SCHWARTZBERG:

17 Q Do you know if any of the ten in the footnote 4 of your
18 declaration were -- if their employment activities involved
19 the actions that are connected to the guilty plea in 2007
20 regarding the misbranding of OxyContin?

21 MR. MCCLAMMY: I'm sorry, Your Honor, Jim McClammy
22 from Davis Polk on behalf of the debtors and with Mr.
23 Vonnegut. I'm just unclear exactly where this is all going
24 with respect to these ten people who are really not part of
25 the relief that's being sought today as who was insiders and

1 not. I think, given the limited nature, I'm just not sure
2 that this is relevant to the --

3 THE COURT: You're not looking to apply the
4 severance plan to these ten people?

5 MR. SCHWARTZBERG: Your Honor, the declaration --

6 THE COURT: No, let -- I need you to answer that
7 question.

8 MR. VONNEGUT: No, we are, Your Honor.

9 THE COURT: You are?

10 MR. VONNEGUT: Yes.

11 THE COURT: Okay, all right.

12 MR. SCHWARTZBERG: Your Honor, because of the --

13 THE COURT: So it's not irrelevant.

14 MR. SCHWARTZBERG: -- because of the sparse --

15 THE COURT: No, it's not irrelevant, you can go
16 ahead.

17 MR. SCHWARTZBERG: Okay. Thank you, Your Honor.

18 BY MR. SCHWARTZBERG:

19 Q Do you know if the ten people that are in your footnote
20 4, admitted insiders, were involved or their jobs caused
21 them to do actions that were connected to the misbranding of
22 OxyContin that Purdue Frederick Company pled guilty to in
23 2007?

24 A So when I look at the roles of these people, many of
25 these people weren't with the company during this time and

1 the people that were were in jobs that were not remotely
2 touching the sales and marketing organization, and,
3 therefore, it would be my belief that they would have
4 nothing to do with the misbranding of OxyContin.

5 Q Is that your belief or do you know that for a fact?

6 A The people that were here were me that was in the
7 finance organization, I could give other examples, but they
8 were in R&D and manufacturing or other parts of the
9 organization.

10 Q So, to the best of your ability, you do not believe the
11 ten people listed in footnote 10 were connected to or
12 involved in the actions that caused the Purdue Frederick
13 Company to plead guilty in 2007?

14 A To the best of my knowledge.

15 Q In terms of the vice presidents that the debtor seeks
16 to pay -- to include in the severance program, do any of the
17 vice presidents participate in board meetings?

18 A On a very, very rare basis, if there is a particular
19 topic that is highly specialized that may require them to be
20 present.

21 Q And in those instances do the board listen to what the
22 vice presidents say and influence what the board may do?

23 A So, ultimately, before they would present to the board,
24 their presentation would be presented to the insider group
25 or limited -- the insider group, which would typically be

1 Craig Landau, myself, Mark Kesselman at a minimum, before
2 any presentation would be made to the board.

3 Q So the vice presidents report directly to the CEO, the
4 CFO, and the COO?

5 A It varies. I can't recall every VP, but certainly some
6 of the VPs that I can recall off the top of my head, one
7 does report directly to the CEO.

8 Q Are you aware if any of the vice presidents were
9 employed by the debtors between 1996 and 2001?

10 A I don't know the answer to that.

11 Q Okay. Are you aware if any of the vice presidents were
12 employed by the debtors in 2005 to 2007?

13 A I would imagine that in that time period I could think
14 of one I'm pretty sure was employed during that time frame.

15 Q Do you know if that one that you are thinking about job
16 details would have included activities that were -- that
17 resulted in or connected to the 2007 guilty plea by the
18 Frederick Company in connection with the misbranding of
19 OxyContin?

20 A My recollection that that was for the period 1996 to
21 2001, I have no knowledge whether that individual had any
22 involvement, but I repeat what I said earlier that I'm not
23 aware of any individual that we have currently employed that
24 has any guilty plea against them.

25 Q I'm not talking about a guilty plea against them, I'm

1 talking about working for or doing their job and that job
2 caused the debtor to plead guilty in -- the Purdue Frederick
3 Company to enter a guilty plea?

4 A Yeah, I have no knowledge of that.

5 Q Okay. I'm going to just now turn the attention to the
6 -- what I -- well, do you understand -- or my understanding
7 is that the debtors currently only have plans regarding 14
8 employees, I'll call them the Treyburn 14, who may receive
9 severance, and there is nobody else that right now is
10 contemplated to be laid off and to receive a severance; is
11 that correct?

12 A That is correct.

13 Q Do you know if any of the Treyburn 14, for lack of a
14 better term, are currently also or may receive benefits
15 under the Treyburn retention plan?

16 A I believe that they are -- so that the Treyburn 14 that
17 are receiving -- is your question are they receiving
18 severance in addition to the Treyburn retention plan?

19 Q The Treyburn retention plan -- yes, yes.

20 A Yes, yes, some of them will be.

21 Q Do you know how many of the 14 will be receiving both?

22 A I believe it is the majority of them, I don't know the
23 exact number.

24 Q So more than seven will be receiving both severance and
25 retention payments?

1 A Yes, I'm pretty sure that's the case.

2 Q Are you aware if any of the 14 have job offers with the
3 purchaser of the Treyburn facility?

4 A We're not aware of that information and my
5 understanding is that the -- that Novo is posting jobs, our
6 employees may or may not be applying for those jobs, we have
7 no intelligence on whether they've accepted jobs.

8 Q So all 14 who are going to receive severance on
9 November 29th/December 1st may then show up at the facility
10 on December 2nd and continue with their job but for the
11 purchaser?

12 A Anything is possible. They could show up at any
13 employer the following day.

14 Q Okay.

15 MR. SCHWARTZBERG: May I have one minute, Your
16 Honor? I'm sorry.

17 (Pause)

18 BY MR. SCHWARTZBERG:

19 Q Oh, one last question. And could you state what is
20 done or produced or manufactured at the Treyburn facility?

21 A So the Treyburn facility manufactures OxyContin and I
22 believe it manufactures a couple of other opioid generic
23 products for our generic company.

24 Q Do you know the annual gross revenues of the Treyburn
25 facility that's generated by their production?

1 A Not off the top of my head, no.

2 MR. SCHWARTZBERG: Your Honor, at this time I
3 don't have any more questions.

4 THE COURT: Okay. Redirect?

5 MR. VONNEGUT: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. VONNEGUT:

8 Q Thank you, Mr. Lowne, just a few follow-up questions.

9 Mr. Schwartzberg asked you a number of questions about
10 the misconduct between December of 1995 and June 2001 that
11 was the subject of the 2007 guilty plea and involvement or
12 connection of any current employees with that misconduct.
13 To your knowledge, were any current employees charged with
14 or convicted of any criminal misconduct?

15 A No.

16 Q Thank you. And currently, Mr. Lowne, am I correct in
17 thinking that the entire opioid salesforce at Purdue has
18 been terminated?

19 A That is correct.

20 Q Okay. And is it correct to say as well that Purdue no
21 longer promotes opioid pain medications to prescribers,
22 whether through sales representatives or via other channels
23 such as medical journals?

24 A That is correct.

25 Q Okay. Now, with respect to the Treyburn retention

1 plan, Mr. Schwartzberg asked you some questions about what
2 the Treyburn plant produces, and those products do include
3 opioid pain medications?

4 A That's correct.

5 Q Okay. And am I correct in thinking that some of the
6 people that we are attempting to retain at the Treyburn plan
7 include security personnel and diversion control personnel
8 as well?

9 A That is correct.

10 Q Okay. Thank you, Mr. Lowne.

11 MR. VONNEGUT: I believe that concludes redirect.

12 THE COURT: Okay. Mr. Lowne, I just had a
13 question. You just testified that the entire opioid
14 salesforce was terminated, but I took from your earlier
15 testimony, maybe I misheard it, that a portion of the work
16 that the six people on the -- covered by the market access
17 ICP is involved in dealing with prescribers for opioid
18 products, but with other parties; is that right?

19 THE WITNESS: That's right, yes.

20 THE COURT: So why wouldn't they be included as
21 salesforce? What's the distinction?

22 THE WITNESS: The distinction is that typically a
23 branded manufacturer when they have a salesforce, they're
24 calling on doctors to explain -- or prescribers to explain
25 the product in detail --

1 THE COURT: Right.

2 THE WITNESS: -- and that could certainly be seen
3 as influencing prescribing behavior, and similarly
4 promotion, whether it's a journal publication or other
5 promotional item, could be seen as influencing sales. The
6 distinction that I think any branded manufacturer would have
7 is that the people that are talking to the wholesalers, as
8 one example -- I'll get to the second in a minute -- is
9 they're working with wholesalers on the contracts that
10 determine how the product is distributed through the
11 channels, they're working with the wholesalers to manage the
12 inventory levels, but they're not doing anything to touch
13 the end prescriber. They're working on getting products
14 into the market or the trade, as we refer it to, for the
15 appropriate patient.

16 The second category of person in this market
17 access plan is what we refer to as our managed care group
18 and every branded pharmaceutical company has these people.
19 They're the people that work with the managed care
20 organizations and they do that for all of our products,
21 whether it's opioid products or Adhansia products, and
22 that's -- they work with them to get the products on the
23 formulary, which allows the appropriate patient when they
24 walk into the pharmacy to it to be on their benefit plan.

25 THE COURT: You're using a term that I'm not sure

1 I understand, I'm not sure the court reporter will be able
2 to spell it; formulary, is that what you're referring to?

3 THE WITNESS: Formulary, yes. So --

4 THE COURT: Could you spell it?

5 THE WITNESS: Yeah, sure. F-O-R-M-U-L-A-R-Y.

6 THE COURT: Formulary.

7 THE WITNESS: Yeah. So what that means, said a
8 different way, is that when someone that has a benefit plan
9 walks into a pharmacy to pick up their product, it allows
10 them to get the product under their benefit program or
11 insurance plan.

12 THE COURT: Okay. So it's already been
13 prescribed?

14 THE WITNESS: Yes.

15 THE COURT: Okay, all right. Any questions on
16 that?

17 All right, you can step down, sir.

18 MR. TROOP: Actually, Your Honor, you asked a
19 question that was on my mind and you also raised another
20 question, I would just ask (indiscernible) --

21 THE COURT: All right, that's fine.

22 MR. TROOP: Maybe four.

23 (Laughter)

24 RECROSS-EXAMINATION

25 BY MR. TROOP:

1 Q I'm just trying to figure out how to say this most
2 clearly. Your salesforce, when it goes out to the managed
3 care plans to ensure that OxyContin is on the formulary,
4 what data do you provide to the managed care facilities in
5 order to influence their use of that drug with their
6 patients?

7 A I'm not sure the exact answer to that question, being a
8 finance person, but we're certainly not giving any
9 promotional materials in any shape or form to managed care
10 to influence their decisions.

11 Q And getting it on the formulary makes it eligible for
12 Medicare and Medicaid payment; correct?

13 A That's right.

14 Q How are your sales affected if the drug is not included
15 on the formulary?

16 A Like any company, being on formulary would impact sales
17 or not being on formulary would result in a reduction in
18 sales.

19 Q And you said you provide no promotional materials to
20 the managed care facility, and is that true for the
21 wholesaler as well?

22 A That's correct.

23 Q What do you provide them about the drug?

24 A Any interactions with them in terms of the drug would
25 be medical questions that would be addressed by our medical

1 affairs group, which are medical experts. Our managed care
2 people are not talking about any medical aspects of the
3 product.

4 Q So does the medical care group provide information --

5 A On the --

6 Q -- that goes along with the drug that says use it this
7 way?

8 A Only on an as-requested basis, as I understand it.

9 MR. TROOP: No further questions, Your Honor.

10 THE COURT: Okay.

11 MR. VONNEGUT: Your Honor, I just have a few
12 clarifying redirect questions, if that's okay.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. VONNEGUT:

15 Q Mr. Lowne, so we all seem to be having a hard time
16 with, you know, the line between the things that Purdue does
17 today and the things that Purdue does not do today. Is a
18 fair to describe that line that the employees we're talking
19 about are responsible for making Purdue medications
20 available in the marketplace, but not responsible for
21 increasing prescription volume or encouraging prescription?

22 A That is correct.

23 Q Okay. Thank you very much.

24 MR. VONNEGUT: That's the last question that I
25 had.

1 THE COURT: Okay. All right, you can step down,
2 sir.

3 MR. VONNEGUT: Thank you. Your Honor, as you're
4 well aware, this is an important subject that we intended to
5 and want to address very much head-on today and throughout
6 this case. The question of whether current employees
7 engaged in misconduct is a very serious one and we think
8 needs to be handled very, very carefully.

9 Before I turn to the programs at issue today and
10 summation of Mr. Lowne's testimony, I would like to
11 reiterate one request to all of our stakeholders: if you
12 have questions on very serious matters like this, or indeed
13 anything at all, please reach out to us before filing an
14 objection or a pleading of any kind, so that we can try to
15 address them.

16 Purdue today is a very different organization than
17 it has been in the past. We want to do whatever we can to
18 allay everyone's concerns. These are very, very difficult
19 times for our workforce and having public speculation about
20 whether they may or may not have engaged in misconduct is
21 very difficult for the morale of people who are working
22 extremely hard under very difficult circumstances to
23 preserve and maximize value for these estates.

24 THE COURT: Can I ask you, is there -- obviously,
25 this is a highly regulated product --

1 MR. VONNEGUT: Yes, sir.

2 THE COURT: -- and industry, are there -- beyond
3 regulatory constraints, are there recognized best practices
4 either coming from the CDC or any other place --

5 MR. VONNEGUT: Sure.

6 THE COURT: -- for the current sale of these
7 products?

8 MR. VONNEGUT: Sure. So I don't want to purport
9 to be a pharmaceutical regulatory expert, but I'll give you
10 my understanding.

11 Promotion of prescription medications to
12 prescribers is legal; lots of companies do it for a variety
13 of medications. Purdue, of course, voluntarily stopped
14 doing that entirely with respect to its opioid pain
15 medications. The activities that the company conducts today
16 related to its opioid pain medications all relate to making
17 sure that those medications are available in the market for
18 patients that need them and are prescribed those medications
19 by their doctor.

20 The other best practice is related to operating a
21 pharmaceutical business that includes opioid medications are
22 all around the safe handling of those businesses, ensuring
23 that diversion of those -- sorry, safe handling of those
24 medications, ensuring that diversions of the medications do
25 not occur. Frankly, Your Honor, that's one of the reasons

1 that it's so important to retain the staff at the Treyburn
2 plant is to ensure that all of those medications are handled
3 safely and responsibly.

4 THE COURT: So there are no recognized regulations
5 or best practices as far as distribution of the opioids to
6 either managed care groups or wholesalers?

7 MR. VONNEGUT: Again, Your Honor, I don't want to
8 purport to be an expert on something that isn't my field,
9 but my understanding is that the company complies with all
10 best practices related to distribution.

11 MR. HUEBNER: Your Honor, this may or may not be
12 helpful, but to the extent that obviously, as everyone is
13 aware, Purdue has been subject to unprecedented litigation,
14 the injunctive relief that we are requesting to self-impose,
15 which applies to practices that have now been in place at
16 the company for a while, in no small part is actually what
17 the plaintiffs, including many governmental entities who
18 were very involved in these issues, have actually been
19 focused on asking for or demanding, et cetera, for many
20 months now. It was actually based in part on the Oklahoma
21 settlement where exactly trying to get to what at least the
22 State of Oklahoma perceived of as best practices and most
23 limited practices is exactly what we're gravitating towards
24 for exactly those reasons.

25 I think that the cleavage, you know, even just

1 hearing the people that we're talking about being called the
2 salesforce actually I think is really not the right -- it
3 wasn't your term, it was someone else's, but it's really not
4 the right term. When pharmaceutical companies talk about
5 having a salesforce, they really talk about trying to talk
6 to prescribers to encourage them in their use of the
7 product.

8 I think as Mr. Lowne was trying to make clear --
9 and, again, I don't think he expected to be cross-examined
10 about the whole organization and so, you know, whether or
11 not he was the right person, I think he hopefully did a fine
12 job -- you know, when we're dealing with formularies and
13 just trying to make sure that it is an available medication
14 on a Blue Cross/Blue Shield plan or a state Medicaid plan --

15 THE COURT: No, I understand --

16 MR. HUEBNER: -- that's a very different issue.

17 THE COURT: -- I understand that. I just -- I
18 think where the questioning was going ultimately was whether
19 there are practices and procedures in place -- we're talking
20 about six people, so --

21 MR. HUEBNER: Yes.

22 THE COURT: -- you know, it's not particularly
23 difficult to brief them and monitor them -- to ensure that
24 they're not through wholesalers or group -- managed group --
25 managed care groups incentivized to, you know, in cahoots

1 with them, get more out than is needed.

2 MR. HUEBNER: Yeah. I mean, at the end of the
3 day, Your Honor, it's only prescribers that actually decide
4 how much OxyContin is sold. No wholesaler, no managed care
5 formulary has any contact with a patient to say take -- my
6 understanding, because I don't want to be testifying, but
7 I'm pretty sure I'm right -- to say you should take this
8 drug, not that drug, or this is a great drug. That's why
9 the issue of promotion by an actual salesforce to
10 prescribers, which include nurse practitioners, doctors,
11 anesthetists, pharmacists, and the like, is where the
12 industry draws such a bright cleavage.

13 So when you say we have stopped promoting, what
14 that means is all dialogue with potential prescribers has
15 stopped. As Mr. Lowne did testify -- and this is very
16 important, because this I think is actually as conservative
17 as one could possibly be -- the Medical Affairs Department
18 only responds to incoming inquiries, there's no longer
19 outreach by the company to any end user or prescriber in an
20 attempt to encourage them to choose Oxy over a competing
21 product.

22 I think that's probably the comfort you were
23 looking for. If I had to take an educated guess -- and it's
24 not much more than that, but I am moderately educated after
25 19 months -- the self-limitations that Purdue is already

1 agreeing to, coupled with, for example, the Oklahoma model,
2 to which we are seeking to impose on ourselves, probably
3 would constitute, if not the most restrictive provisions
4 governing a major pharmaceutical branded manufacturer, are
5 pretty close to it.

6 And I don't want to sort of go under oath and say
7 that, because we weren't quite planning for this today, but
8 I think it's probably a relatively safe assumption that that
9 has a lot of truth to it.

10 THE COURT: Okay.

11 MR. VONNEGUT: Yes. And, Your Honor, the reason
12 we're trying so hard to be so precise about this is the
13 language is very important. For instance, a distinction
14 that is kind of counterintuitive is some governmental
15 agencies will consider making your products available in the
16 market a form of promotion. And so, you know, the phrase
17 that we use is salesforce promotion, that is the thing that
18 Purdue does not do, calling on prescribers and affirmatively
19 reaching out to prescribers.

20 Okay. Your Honor, I would propose now to turn to
21 the details of the two programs that are actually at issue
22 for today.

23 THE COURT: Okay.

24 MR. VONNEGUT: So the Treyburn retention plan.
25 The debtors are currently in the process of transitioning

1 away from their manufacturing facility in Treyburn, North
2 Carolina, and consolidating their manufacturing operations
3 as a cost-cutting initiative. The Treyburn plant was sold
4 in August of 2019. Purdue is currently leasing the facility
5 back from the buyer for a limited transition period, so that
6 they can complete the consolidation of manufacturing
7 operations in their other plant.

8 To maintain the safety, security, and quality of
9 the company's manufacturing operations, the employees at the
10 Treyburn facility, all of whom are non-insiders, needed to
11 be incentivized to stay through completion of the
12 transition. They are currently undertaking a range of very
13 important transition activities, including preparation for
14 removal and reinstallation of selected equipment at the
15 Treyburn facility that's going to move to another facility;
16 identification and acquisition of leased office, laboratory,
17 and warehousing space; preparation for decommissioning of
18 the Treyburn facility, because it needs to be cleaned up the
19 right way once we leave; preparation for decontamination of
20 the site; providing all required notifications to regulatory
21 agencies, including the DEA and the FDA. This is, needless
22 to say, a very heavily regulated business and it's extremely
23 important to do this transition and decommissioning the
24 right way.

25 The retention plan covers a total of 52 non-

1 insider employees. Total payments are \$521,058 in 2019 and
2 approximately \$108,972 in 2020. These payments will not
3 exceed a maximum of \$23,056 per employee.

4 The most senior employee covered under the plan
5 holds the title of Director of Pharmaceuticals and Analytical
6 Development. That person reports to the head of Technical
7 Services, who is themselves also not an insider, and has
8 responsibilities including development of product
9 formulations, manufacturing processes, and analytical
10 methods related to the production of the debtor's products
11 at the Treyburn facility.

12 Other employees covered by the retention plan
13 include diversion control specialists, manufacturing and
14 packaging operators, pharmaceutical technicians, and
15 pharmaceutical process specialists.

16 We're very comfortable, Your Honor, that none of
17 those employees come close to being insiders.

18 With respect to the severance plan, the company-
19 wide severance plan has been in place since 2014, it was not
20 altered in any way or amended in conjunction with this
21 bankruptcy. Vice presidents and above -- I'll just cover
22 this briefly again, so everybody has it -- vice presidents
23 and above that do not have employment contracts and have
24 less than five years of service get six months of severance,
25 those with five years or more get one year.

1 Below vice president, people either get two or
2 three weeks of severance for each year of service, depending
3 on their grade level, with a minimum of eight weeks and a
4 maximum of 52 weeks.

5 We have one non-insider employee with an
6 employment contract that provides for six months' severance,
7 plus any earned but unpaid prior year annual bonus.

8 One thing I want to be very clear about, since
9 there was some confusion with the U.S. Trustee on the point,
10 if an insider is severed post-petition, we have an automatic
11 cap built into our order. We will run the calculation
12 required under Section 503(c)(2) of the Bankruptcy Code and
13 cap any payout to that party at that amount.

14 Currently, the only known severance obligations
15 that we have or that we expect to incur are related to the
16 Treyburn employees. That covers 14 people and totals just
17 under \$660,000. We have no plans to terminate any other
18 current employees, so any other potential severance
19 obligations are hypothetical.

20 THE COURT: How many people are employed there?

21 MR. VONNEGUT: Are employed at the Treyburn
22 facility?

23 THE COURT: Right.

24 MR. VONNEGUT: I don't know the total number of
25 employees off the top of my head. I would imagine that it

1 is the 52 participants in this plan, but I'm not sure.

2 UNIDENTIFIED SPEAKER: Seventy three.

3 MR. VONNEGUT: Seventy three, Your Honor.

4 (Laughter)

5 THE COURT: Okay.

6 MR. VONNEGUT: Okay, so just briefly with respect
7 to the necessity of both of these programs.

8 Orderly completion of our transition and
9 consolidation is very important. If we do not receive
10 approval of the Treyburn retention plan and payment of the
11 promised severance, we're concerned that the employees that
12 we're trying to retain through the transition may not stay
13 and that we would not be able to replace those highly
14 skilled and very specifically talented workers. This would
15 be very disruptive to operations, it would harm the value of
16 the business, and it could jeopardize the safety and
17 security of the facility. So we, therefore, think that
18 those two plans are very necessary under the circumstances.

19 If Your Honor doesn't have any questions about
20 Treyburn, I can turn to the market access ICP plan.

21 THE COURT: Okay.

22 MR. VONNEGUT: Okay. So a key component of
23 Purdue's go-forward business plan is diversification of the
24 business beyond opioids to generate new growth. One of the
25 key building blocks of that diversification strategy is a

1 new medication called Adhansia XR, which is a newly
2 developed medication for ADHD. To successfully launch new
3 products such as Adhansia, the company needs a motivated
4 group of field-based employees and the market access ICP
5 plan is designed to do just that, to motivate employees in
6 connection with this diversification strategy to get this
7 new product off the ground, up and running.

8 The employees that are eligible for payments under
9 the market access ICP are responsible for ensuring optimal
10 distribution of Purdue medications throughout the market,
11 negotiating contracts with wholesaler accounts, securing
12 managed care access to Purdue products, and managing the
13 performance of market access customers.

14 Very importantly, as you heard from Mr. Lowne and
15 I just want to make this crystal clear, none of the
16 employees that are eligible for payments under this program,
17 indeed none of the employees at the company at all, are
18 engaged in or compensated on the basis of promotion of any
19 opioid products to prescribers, period, full stop.

20 None of the employees that are eligible for
21 payments under the market access ICP have a title higher
22 than director or otherwise qualify as an insider under the
23 rubric that debtors have used and that Mr. Lowne testified
24 to in his supplementary declaration.

25 In the remainder of 2019, the total remaining

1 payout for these six non-insider employees is approximately
2 \$168,000, an average of 28,000 per person. The maximum
3 possible remaining 2019 payout would be \$273,000, if results
4 exceed expectations substantially.

5 We believe the market access ICP is a customary
6 program in the pharmaceutical industry, it's necessary to
7 motivate the relevant employees and align their incentives
8 with those of Purdue's future owners, and very much in the
9 best interests of the debtors and their estates.

10 So, unless Your Honor has any questions, we would
11 ask that the modified order be approved, and I can walk Your
12 Honor through the changes in the proposed form of order.

13 THE COURT: Fifty percent of the plan is based on,
14 quote, "employee performance," which I gather is separate
15 and apart from the sales of the Adhansia. What are the
16 metrics for determining -- or how is that determined, that
17 50 percent?

18 MR. VONNEGUT: Sure. So the metrics under the
19 plan, some relate to company-wide performance, which just go
20 to the --

21 THE COURT: Well, that's 25 percent.

22 MR. VONNEGUT: Right. So the employee-specific
23 performance is based on goals set by each individual's
24 manager that relate to their sales performance, the
25 performance of their individual line of business, and their

1 individual performance related to goals set by the company.

2 THE COURT: Okay.

3 (Pause)

4 THE COURT: I guess I'm still having a hard -- I
5 mean, if what they're providing is for what's already been
6 prescribed, what is it that they really do other than just
7 sort of --

8 MR. VONNEGUT: Sure.

9 THE COURT: -- checking off orders and making sure
10 it's delivered to the pharmacy or to the managed care group.

11 MR. VONNEGUT: Right, right. So let me offer an
12 important clarification.

13 That's true with respect to opioid pain
14 medications. There is promotion of Adhansia XR still going
15 on, so that's one component of their jobs.

16 THE COURT: But that's the 25 percent.

17 MR. VONNEGUT: Understood. So the --

18 THE COURT: Or are you saying that part of the
19 employee performance may include that too?

20 MR. VONNEGUT: Yes, sir, I believe it does now.

21 But with respect to what we'll call the making medications
22 available in the market component of their performance, like
23 anything else, that's something that one can do well or
24 badly. And so, you know, their job is to -- part of their
25 job is to ensure that if a patient is in need of a Purdue

1 medication and their doctor wants to prescribe it to them
2 that they're able to get it. And in working with
3 wholesalers, with managed care customers, part of these
4 people's job is to ensure that those medications are
5 available for appropriate patients that need them and their
6 performance and how well they do that is part of how their
7 performance is evaluated and part of how these payouts are
8 determined.

9 THE COURT: Okay.

10 MR. VONNEGUT: Okay, thank you, Your Honor. So we
11 have a proposed form of final order, which is on the docket
12 at -- excuse me -- that's on the docket at number 256. Do
13 you have a copy of the market order?

14 THE COURT: I do.

15 MR. VONNEGUT: Great. Okay. So the bulk of the
16 changes are relatively straightforward, they're simply
17 converting interim relief to final relief. We can of course
18 stet the language that you pointed to earlier in paragraph 2
19 regarding the acceleration of payment.

20 The one different category of change is in
21 paragraph 9. This is language that was requested by
22 American Express, who runs the company's purchasing card
23 program, which employees use for reimbursable expenses.
24 Essentially, they want comfort that they're going to be paid
25 and that's what we've attempted to give them here.

1 The one slightly different thing that they've
2 asked for that I would point Your Honor to is towards the
3 end of that paragraph. They're not asking for this today,
4 but in the proviso at the back of that paragraph they've
5 given us time to seek from the Court approval to waive
6 potential avoidance actions against them. So we're not
7 asking for that today, but effectively on the basis of us
8 seeking this language for them, they've turned back on the
9 purchasing card program and they're making clear that
10 they're allowed to turn it back off again if by November
11 20th we do not achieve this waiver of avoidance actions.

12 Candidly, Your Honor, we did our best to persuade
13 them they didn't need this and it's duplicative of the other
14 relief that they're getting, we did not succeed. So we are
15 happy to seek approval of that additional relief however you
16 would like us to do so, whether that's by separate motion or
17 just by asking for it to be included in the amended final
18 order that we're going to seek in November.

19 THE COURT: To me it just acknowledges the
20 existence of the agreement, so --

21 MR. VONNEGUT: That's how we feel, Your Honor.

22 THE COURT: -- it's not -- I guess it's not a
23 problem to put it in there.

24 MR. VONNEGUT: Okay.

25 THE COURT: So, Mr. Schwartzberg?

1 MR. HUEBNER: Your Honor, may I see one last
2 thing? Mr. Lowne actually -- we've been working in the
3 background, because we want all parties, especially the
4 Court, to be comfortable that we're not doing foolish
5 things, even though the amounts at issue here for the ICP
6 plan are not particularly material, Mr. Lowne could actually
7 answer a few more targeted questions, or I could actually
8 proffer a little more testimony that I just adduced from him
9 to answer the question of what is this 50 percent for and
10 are we sure that we're not wasting our money.

11 THE COURT: Okay, do you want to proffer that?

12 MR. HUEBNER: Sure. So I'll watch Mr. Lowne's
13 face to make sure I'm getting it right, because we've been
14 sort of working in the background here.

15 Your Honor, they are doing things that have
16 financial impact to the company, having these employees
17 working with the managed care entities to ensure that the
18 products remain on formulary is critical, because if we are
19 taken off formulary, then our drugs cease to be available to
20 people without an insurance plan. And so their individual
21 performance includes both having new, large insurance
22 companies add us to formulary and not remove us from
23 formulary, and then they're also involved in negotiating
24 cost issues at the wholesaler and type level to ensure that
25 our fee-for-service for our products remains economically in

1 the company's best interest.

2 So they are actually a very, very important
3 function, having them incentivized is important. But again,
4 as Mr. Vonnegut and Mr. Lowne and then everybody has
5 repeated 50 times, it's not promotion, it's not with
6 prescribers who issue the prescriptions, it's ensuring that
7 the prescriptions are written, there's access to the product
8 and it is done on economically favorable terms to the
9 company, which are critical to our business model.

10 Mr. Lowne, may I ask you if I have successfully
11 summarized what we whispered to one another?

12 MR. LOWNE: Everything you said is fair, yes.

13 THE COURT: Okay.

14 MR. HUEBNER: So hopefully that's helpful, Your
15 Honor. We're not giving money away for no reason.

16 MR. SCHWARTZBERG: Can I ask a quick --

17 THE COURT: Do you want to cross-examine Mr. Lowne
18 on that?

19 MR. SCHWARTZBERG: Yeah, can I just ask a --
20 should I approach?

21 THE COURT: Yeah, I want to make sure the
22 microphone is --

23 MR. SCHWARTZBERG: -- (indiscernible) keeps
24 telling me to sit down, so --

25 (Laughter)

1 THE COURT: I want to make sure the microphone is
2 picking you up. He works for the government.

3 MR. SCHWARTZBERG: I'm not sure if that gives me
4 assurance or not.

5 (Laughter)

6 MR. SCHWARTZBERG: You heard what --

7 THE COURT: Oh, let me just say, you're still
8 under oath for the purpose of answering this question, Mr.
9 Lowne.

10 MR. SCHWARTZBERG: You heard what Mr. Huebner
11 said, didn't you?

12 MR. LOWNE: Yes, I did.

13 MR. SCHWARTZBERG: Would it be incorrect to say,
14 the more opioids the debtor sells, the more bonus the market
15 access IPC plan pays to these six employees?

16 MR. LOWNE: They're not an incentive to increase
17 the amount of opioid prescriptions; they're merely trying to
18 keep our product on formulary. Our product --

19 MR. SCHWARTZBERG: I don't think that was the
20 question I asked.

21 MR. LOWNE: I apologize.

22 MR. SCHWARTZBERG: If -- and I'm making up numbers
23 here --

24 MR. LOWNE: Yes.

25 MR. SCHWARTZBERG: -- if the debtors sell 50

1 million worth of opioids, do they get less bonus than if the
2 debtor sells a hundred million of opioids?

3 MR. LOWNE: There's no -- nothing in their
4 objectives that tie it to the net sales of opioids.

5 MR. SCHWARTZBERG: I'm not sure -- it may be my
6 ignorance -- that you answered the question.

7 MR. LOWNE: Okay.

8 MR. SCHWARTZBERG: If the debtors sell \$100
9 million of opioids, do these people get more bonuses than if
10 they sold 50 million of opioids?

11 MR. HUEBNER: Your Honor, I'm going to object.
12 This is really asked and answered. The Court has already
13 acknowledged, everyone has acknowledged, we sell opioid;
14 parts of the bonus plans are based on company-wide
15 performance.

16 THE COURT: Other than company-wide performance,
17 do they get any more bonus or not?

18 MR. LOWNE: No, they don't. No.

19 THE COURT: Okay, all right.

20 MR. SCHWARTZBERG: So the amount of opioids
21 doesn't matter, they get --

22 THE COURT: No, it --

23 MR. HUEBNER: Okay, now it's badgering

24 THE COURT: -- now we're asked and answered.

25 MR. SCHWARTZBERG: All right. Yes, Your Honor.

1 Just so the record is clear, the U.S. Trustee is
2 not objecting to the Treyburn retention plan.

3 THE COURT: Okay.

4 MR. SCHWARTZBERG: I wasn't sure that was clear.
5 And then, as Counsel indicated, because of the sensitivity
6 issues regarding the employees, regarding what we were
7 talking about, the past conduct, I will just defer to the
8 Court and the Court can draw its own conclusions from the
9 testimony regarding that.

10 THE COURT: Well, I'm sorry, I want to make sure I
11 understand the -- what you're not objecting to. You're not
12 objecting to the Treyburn retention plan --

13 MR. SCHWARTZBERG: That's referenced in paragraph
14 17 of --

15 THE COURT: Right. No, I understand that, but
16 there's severance, which applies generally, except with
17 regard to the ten people in footnote 4, and that includes
18 severance in connection with Treyburn. Are you objecting to
19 severance?

20 MR. SCHWARTZBERG: It's the severance, the
21 severance plan, and also as it applies to the Treyburn 14.

22 THE COURT: Right.

23 MR. SCHWARTZBERG: And the market access plan.

24 THE COURT: What is the basis for objecting to the
25 severance?

1 MR. SCHWARTZBERG: On two bases, Your Honor --
2 well, obviously, I think the testimony elicited these are
3 not insiders, so the question is basically business judgment
4 and things of that nature.

5 Two things that I think they indicated. One, we
6 don't know if they're going to turn around the day after
7 they get -- I think it's December 1st -- and turn around and
8 still have the same job, so they may not -- the severance --

9 THE COURT: But can I interrupt you? If they're
10 not insiders, then the Second Circuit has already spoken on
11 this issue. I don't understand why it's even an issue under
12 Bethlehem Steel, which acknowledged the validity of Straus-
13 Duparquet. So, to me, the severance issue is just are they
14 insiders or not.

15 And I guess you could say that, you know, the
16 Treyburn retention plan is doubling up, but at the same time
17 I think everyone knows they're going to be out of a job. So
18 I'm assuming they've negotiated the retention plan
19 acknowledging that they'll be out of a job and part of that
20 is they need to pay them a little more than just severance
21 to keep them on, because they would get the severance
22 immediately. So I don't really follow the logic there.

23 MR. SCHWARTZBERG: Well, our concern was the
24 doubling up as --

25 THE COURT: But it's not doubling up, because --

1 again, if you feel that you need to pay them to stay on, the
2 severance isn't doubling up, they would -- they will leave
3 and so they get their severance. So it doesn't seem to be
4 doubling up to me.

5 MR. SCHWARTZBERG: All right, then I'll move on,
6 Your Honor.

7 In terms of the market access plan, as the witness
8 testimony, we don't know if the current compensation is
9 below, at, or above market. If it's above market, it might
10 not be necessary -- it may or may not, but that's a fact
11 that's important and should be disclosed.

12 Similarly -- well, I'll leave it at that in terms
13 of that issue. The testimony to me, although at the end it
14 seemed to have changed, it seemed that the more opioids they
15 sold, the more -- the more that --

16 THE COURT: No, but if we just stop there, I think
17 this is an important point to get over or to address.
18 Opioids are a legal product. It's not selling thamila (ph)
19 -- it's not like selling an illegal drug or a drug that only
20 has adverse consequences. It's a product that continues to
21 be prescribed and, as far as I know, unless someone develops
22 a better drug, the alternative is excruciating pain for
23 people. The problems stem from over prescription or
24 improper prescription. So just saying that the company
25 shouldn't be -- and its employees shouldn't be rewarded for

1 selling it properly is -- it doesn't make sense to me. I
2 mean, that's basically a decision that regulators should
3 make and doctors should make who influence the regulators.

4 So, to me, the question is whether the -- not
5 whether they are incented to have the company perform better
6 or incented for them to sell more, but rather are they being
7 incented to sell more improperly, and I just -- I don't get
8 the impression that that latter is the case. It just -- you
9 know, I think their job is to ensure that Purdue's OxyContin
10 isn't rejected in favor of someone else's opioid. And,
11 obviously, they have to comply with the company's best
12 practices. I think it would be and I think it probably is
13 warranted to put in the order that they wouldn't be entitled
14 to any bonus if they deviate from -- I mean, among other
15 sanctions, if they deviate from the company's best
16 practices.

17 MR. SCHWARTZBERG: All right, I'll --

18 THE COURT: I'm sure -- would the company be
19 amenable to that? I would think so.

20 MR. VONNEGUT: Yes, Your Honor.

21 THE COURT: All right.

22 MR. SCHWARTZBERG: I'll move on to my last point
23 then, Your Honor.

24 MR. HUEBNER: And law, Your Honor. I mean, just
25 to be clear --

1 THE COURT: Well, yeah, but that --

2 MR. HUEBNER: -- this is an extremely regulated
3 product --

4 THE COURT: -- but there has been a gap between
5 law and --

6 MR. HUEBNER: Right.

7 THE COURT: -- best practices.

8 MR. HUEBNER: Yeah, we completely agree. I just
9 want it to be clear that it was clearly both, so that nobody
10 was left with a misimpression.

11 MR. SCHWARTZBERG: The last point, Your Honor, is
12 that there's a break on the severance plan and the vice
13 presidents are not included as insiders and, therefore,
14 would not be subject to the cap. The witness indicated that
15 on occasion they do speak to the board and on occasion --

16 THE COURT: I would hope they do. Boards are
17 supposed to be informed of the facts when they make
18 decisions. I don't get any impression that these people are
19 causing the board to make a decision, but they're coming in
20 and reporting, just like any person at a lower level would
21 be expected to do.

22 MR. SCHWARTZBERG: Well, I think the witness also
23 testified they speak to the CEO, the CFO, the COO, and --

24 THE COURT: Right, so they don't surprise the
25 people who are actually helping to influence the decision.

1 MR. SCHWARTZBERG: Well, the thought there being,
2 Your Honor, that they can influence the decision and
3 depending --

4 THE COURT: Well, I would hope so. I mean, people
5 -- boards are not supposed to act with blindfolds on.
6 They're supposed to act based on information provided to
7 them. If you -- it just -- if that were the test, then
8 boards wouldn't be able to function.

9 MR. SCHWARTZBERG: Well, the concern is that the
10 vice presidents may be insiders, or some of them may be,
11 some of them not, and therefore some of them should be
12 subject to the cap and some not.

13 THE COURT: But that's a concern that doesn't seem
14 to be supported by the evidence.

15 MR. SCHWARTZBERG: Right. With that then, Your
16 Honor, I'll sit down.

17 THE COURT: Okay, all right. All right, certain
18 parties filed joinders to the U.S. Trustee's objection. As
19 the case management order makes it clear, a joinder is a
20 very -- in terms of one's rights in court a very weak
21 pleading, including if someone withdraws an objection that
22 you've joined to, you are essentially erased. So we're
23 early in the case and maybe people don't appreciate that
24 yet, but does anyone else have anything to say with respect
25 to the motion other than the debtors in rebuttal?

1 MS. VAN ECK: Good morning, Your Honor, Melissa
2 Van Eck on behalf of the Commonwealth of Pennsylvania. Our
3 commonwealth was one of the joinders that was filed to the
4 U.S. Trustee motion. In light of the agreement that was
5 reached between the debtor and the UCC and the ad hoc
6 committee, we are in line with that agreement. We want to
7 make sure that the Commonwealth is included in the
8 disclosure of the due diligence.

9 THE COURT: Okay.

10 MS. VAN ECK: Thank you.

11 THE COURT: No, I think the agreement is very well
12 taken. Frankly, if it hadn't been agreed to, I would have
13 pushed you all to do something like it.

14 As I said before, this isn't a normal case in some
15 respects. It's a very public case where people are tempted
16 to make public statements that they might not have to take
17 if they have more time to look at matters, and I think time
18 is warranted here on the programs that the parties have
19 agreed to defer consideration of. It may even be too soon
20 to do it on the 6th, we'll see, depending on where you are
21 in the case.

22 Again, public perception here is more important
23 than in most cases, buy-in on a plan that includes some of
24 the points that we were discussing at the beginning of the
25 hearing is important. And bonus is such a loaded word and

1 can be twisted and turned in ways that, if people are more
2 educated, they might not need to do.

3 So I think it does make sense to defer and include
4 in the discussion people who might feel that they would
5 otherwise have to object because they really don't have the
6 facts.

7 MR. VONNEGUT: Thank you, Your Honor, very much
8 agreed. That's the entire purpose of giving extra time is
9 so that we can undertake that discussion and that education
10 process, to make sure that people understand how the company
11 is operating.

12 I'd just like to briefly respond to some of the
13 things that Mr. Schwartzberg said. First and most
14 importantly, and I don't intend to belabor the point, but
15 this notion that, you know, the more opioids that are sold,
16 the more people get paid.

17 I just want to be very, very clear about the
18 nature of the company's current business and what it does
19 with its opioid medications. They are made available in the
20 market for prescription by physicians to patients that need
21 them. Those patients include people who have pain severe
22 enough to require daily, around-the-clock, long-term
23 treatment. It's important to remember that the initial
24 innovation of OxyContin was an important one. It's a
25 medicine that for people who need it, it gives them dignity

1 and peace, it lets people sleep through the night. So what
2 we are trying to do with the debtor's opioid medications is
3 make them available to people who need them.

4 With respect to the other points made by Mr.
5 Schwartzberg related to the basis for paying severance,
6 candidly, I think we agree with all the comments that Your
7 Honor made there. These are people that we need to stick
8 around at the Treyburn plant. We need to fulfill and honor
9 the promises that were made to these people to get them to
10 continue to work at the plant, given that we can offer them
11 no long-term job certainty of any kind.

12 With respect to the market access plan, I think
13 you heard from Mr. Lowne that the company does undertake
14 market comping. But from a 50,000-foot level it's important
15 to note that this is a company under extremely difficult
16 circumstances, it's a very hard place to work, it's a very
17 challenging place to work, and Purdue pays its employees
18 what it needs to pay for them to be motivated to do their
19 jobs well, to drive value for this company, and to drive
20 value for the claimants in these cases who are going to be
21 the owners of the company.

22 With respect to categorization of insiders, again,
23 I think this topic has been discussed ad nauseam and,
24 frankly, I think Your Honor has already ruled on it. The
25 vice presidents were excluded from the insider group for

1 very clear reasons. Although they occasionally speak to the
2 board and they speak to senior executives at the company,
3 they were not appointed by the board and they do not report
4 directly to the board. So we have a very crisp set of
5 criteria by which we determined who was and was not an
6 insider that we think is very clearly supported by the case
7 law on this topic.

8 So, unless Your Honor has any further questions,
9 that's all that we had on the wages motion.

10 THE COURT: All right. I have before me a motion
11 for a final order on the aspects of the so-called employee
12 programs that the debtors have agreed to go forward on
13 today, having adjourned, in agreement with their official
14 creditors' committee and the ad hoc committee of certain
15 states and territories, consideration of the aspect of those
16 employee programs covered in paragraph 17 of the proposed
17 order.

18 Most of the relief that the Court is being asked
19 to consider today on a final basis is unopposed, the only
20 exception is the United States Trustee's objection to two
21 aspects of the employee programs.

22 The first is the continuation of the debtors'
23 severance programs, including at the Treyburn facility,
24 which the debtors will be closing sometime in November, but
25 otherwise company-wide with the exception of ten employees,

1 who the debtors acknowledge and identify in footnote 4 to
2 Mr. Lowne's supplemental declaration are insiders.

3 Secondly, the U.S. Trustee objects to the so-called market
4 access ICP, which is an incentive program that would apply
5 to six individuals.

6 As far as the severance Pickering continuation is
7 concerned, this is a very narrow issue. In Section
8 503(c)(2), Congress prohibited the payment of a severance
9 payment to an insider of the debtor unless, and then sets
10 forth two -- I'm sorry, two tests -- I'm sorry, a joint test
11 that is very difficult to meet, and the debtors have
12 acknowledged that they will cap any severance payment to an
13 insider based on those very difficult to meet tests.

14 Otherwise, severance, if the program is a
15 preexisting program, is subject to other applicable law.
16 Obviously, if the program was adopted on the eve of the
17 filing of the bankruptcy case or otherwise would appear to
18 be questionable, then it would be subject to review, but if
19 it has been long in place, as is the case here, it's subject
20 to the general rules pertaining to the allowance and payment
21 of administrative expenses.

22 There's been no suggestion that the severance
23 program here, which is clearly described in Mr. Lowne's two
24 declarations, is anything other than severance, i.e. a
25 payment earned upon one's termination of employment and

1 subject to a lump-sum payment at that time.

2 Under the law of the Second Circuit, namely In re
3 Bethlehem Steel, Corp., 479 F.3d 167 (2d Cir. 2007), which
4 confirmed the applicability of a pre-Bankruptcy Code Second
5 Circuit case, Straus-Duparquet, Inc. v. Local Union No. 3
6 International Brotherhood of Electrical Workers, 386 F.2d
7 649 (2d Cir. 1967), severance payments are entitled to
8 administrative priority, as then-Circuit Judge Sotomayor
9 ruled in dicta, but it was dicta essential to the analysis
10 in that case and In re Bethlehem Steel Corp. at page 169.

11 So the only issue I believe before me is whether
12 the parties to the severance program are insiders for
13 purposes of Section 503(c)(2). I conclude based on the
14 evidence before me that they are not. It appears to me that
15 the debtors undertook their own analysis of who would be an
16 insider under applicable law, as summarized in the debtors'
17 pleadings, and most importantly that includes their ability
18 to influence major decisions or make major decisions by the
19 debtors, one or the other.

20 Congress enacted Section 503(c)(3) to prevent the
21 management of debtors in bankruptcy from feathering their
22 own nests. Almost implicit in that purpose is that if you
23 don't have the ability to do that, you would not be an
24 insider. The evidence before me makes it clear that the
25 employees who would be covered by this motion do not have

1 that ability. This is not to say that they aren't important
2 to the company, merely that they don't have the ability to
3 feather their own nest or feather each other's nests in the
4 decision-making process of management. See generally *In re*
5 *Borders Group, Inc.*, 453 B.R. 459, 469 (Bankr. S.D.N.Y.
6 2011), and in particular that court's focus on the actual
7 responsibilities and decision-making authority that
8 employees would have as opposed to their title.

9 So I will approve that aspect of the motion on a
10 final basis, as well as the unopposed aspects of it.

11 As I said during our oral argument, I don't
12 believe that the fact that certain employees at the Treyburn
13 plant would receive both severance and be parties to the
14 Treyburn retention plan, which no one has objected to,
15 should invalidate the award of severance. Logically, if one
16 were to believe there was undue compensation being paid
17 under severance and the retention plan, you would modify the
18 retention plan, but I believe that they really do serve
19 different purposes. Almost by definition, a retention plan
20 is necessary on top of severance, which the employee would
21 be entitled to in any event, it is necessary to incentivize
22 the employee to stay to do the critical functions for the
23 company that are well detailed in Mr. Lowne's declarations.

24 The remaining objection is to the market access
25 ICP incentive program. It does not appear to me to be

1 contested that any of the beneficiaries of this program are
2 insiders, that the record clearly does not suggest that they
3 are insiders.

4 So the analysis then is whether under Section
5 503(c)(1) the incentive program is appropriate under the
6 facts and circumstances of the case, or justified by the
7 facts and circumstances of the case, in this circuit and
8 elsewhere. That is involved in an analysis of the
9 underlying business justifications for the program as
10 originally laid out by Judge Lifland in *In re Dana Corp.*,
11 358 B.R. 567, 576-77, (Bankr. S.D.N.Y. 2006), which in
12 evaluating the business judgment underlying the program asks
13 whether there's a reasonable relationship between the plan
14 proposed and the results to be obtained; is the cost of the
15 plan reasonable in the context of the debtor's assets,
16 liabilities, and earning potential; is the scope of the plan
17 fair and reasonable -- does it apply to the right people, in
18 other words -- is the plan or proposal consistent with
19 industry standards; what were the due diligence efforts of
20 the debtor in investigating the need for the plan, including
21 analyzing which key employees needed to be incentivized, and
22 what is generally applicable in the particular industry; and
23 did the debtor receive independent counsel in performing due
24 diligence and in creating and authorizing the incentive
25 compensation.

1 The objection was premised on I believe,
2 ultimately, two points. And I want to be clear, I don't
3 fault the U.S. Trustee for filing the objection or pursuing
4 it, or anyone else for supporting it, although I believe on
5 the record before me, as brought out by the U.S. Trustee,
6 the grounds for the objection are not warranted here with
7 the one adjustment that I mentioned during oral argument.

8 First, this is a very narrowly tailored incentive
9 program pertaining to only six people and, in the context of
10 the debtors' assets and liabilities, appears to me to be
11 more than manageable by the debtor in terms of its cost.

12 I believe from Mr. Lowne's testimony that the
13 program was designed in a way that the debtors would not be
14 overspending and rather that it is designed to properly
15 incentivize these individuals to do what appears to me to be
16 important work, where an incentive program is an important
17 aspect of their compensation as opposed to a flat salary.

18 The fact that these people are not insiders I
19 think highlights the fact that -- or should highlight the
20 fact that the debtors in proposing the program have no
21 motivation to overpay and rather to design something that
22 will be properly motivating to the employees without
23 overcompensating them.

24 The U.S. Trustee properly points out that Mr.
25 Lowne could not testify that in each instance the aggregate

1 compensation here, including the metrics for the bonus plan,
2 are in line with or consistent with the debtors'
3 competitors. He did states, however, that competitors'
4 programs were taken into account in setting the metrics, in
5 addition to these individuals' salaries, and pointed out
6 that it is -- at least this is what I took away from his
7 testimony -- it is hard to say that there is any true
8 comparator to these debtors given the adverse publicity that
9 these debtors have received and that these six individuals
10 have to contend with in working with managed care groups and
11 wholesalers.

12 So, consistent with the Dana case that I cited, as
13 well as the Borders Group case that I cited, and In re
14 Residential Capital, 491 B.R. 73 (Bankr. S.D.N.Y. 2013), I
15 believe that the debtors have established a sufficient
16 business justification for the incentive program.

17 The other objection was based on a concern and,
18 again, a legitimate concern, which I think is also behind
19 the objections to the adjourned matters with regard to this
20 motion, that all want to be sure that an incentive program
21 does not incentivize people to cause the sale of the
22 debtors' opioid products to occur in a way that's harmful to
23 society and, therefore, to the debtors themselves. It
24 appears to me, based on the record before me, that that is
25 not the case and that the sales practices that these six

1 people will be assisting in are to be legitimate, subject to
2 applicable law, and, in addition to that, the debtors' own
3 additional best practices. So that if any of these
4 individuals fail to comply with those things, not only would
5 they face other consequences, but they wouldn't be entitled
6 to these bonuses.

7 As I noted earlier, the debtors' opioid products
8 are legal and, when prescribed properly and with proper
9 controls, beneficial. And therefore, if the incentives are
10 tied to the proper marketing of those products, that would
11 be beneficial to not only the debtors, but society.

12 The same consideration applies to an argument that
13 actually wasn't made during oral argument and is only
14 implicit in the U.S. Trustee's objection generally, which is
15 a suggestion of the possibility that certain people who
16 would be covered by the severance program under this motion
17 had themselves engaged in improper conduct in the past.

18 The testimony in that regard was to the negative,
19 albeit qualified by Mr. Lowne's statements that he doesn't
20 know for sure. But it appears to me that not having any
21 evidence along the lines that the U.S. Trustee suggested
22 would warrant rethinking any of these employee programs, it
23 would be a bad exercise of business judgment simply to
24 withhold payments of severance and in fact to insiders it
25 would be, I believe, contrary to applicable law. As I said

1 earlier, any rights that the debtors have against employees
2 for their improper conduct are clearly preserved,
3 notwithstanding the entry of this order, if that's ever
4 shown. And that would include, by the way, a setoff of
5 course, but there's really no record that such claims exist
6 as to any particular person.

7 So I will grant the motion as revised and overrule
8 the U.S. Trustee's objection. Obviously, one of the
9 revisions is to preserve the objection as to the remaining
10 items covered by paragraph 17, but I'll overrule the
11 objection as to the matters I'm approving today.

12 So you can email that order to chambers once it's
13 marked up, as well as the other several orders that I have
14 approved.

15 MR. VONNEGUT: Thank you very much, Your Honor,
16 we'll do that.

17 THE COURT: Okay, very well. Thank you.

18 MR. VONNEGUT: Thank you. Well, unless my
19 colleague Mr. Robertson is going to tell me otherwise, I
20 think that concludes the agenda for today.

21 THE COURT: Okay, very well. Thank you.

22 MR. VONNEGUT: Thank you very much, Your Honor.

23 (Proceedings concluded at 12:50 p.m.)

24 * * * * *

25

I N D E X

R U L I N G S

DESCRIPTION

PAGE

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* * * * *

C E R T I F I C A T I O N

We, Sheila Orms, Tracey Williams and Jamie Gallagher,
certify that the foregoing transcript is a true and accurate
record of the proceedings.

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